

United States
Circuit Court of Appeals

For the Ninth Circuit.

KANAME FUJINO,

Appellant,

vs.

TOM C. CLARK, Attorney General of the United
States,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 265 to 533

Upon Appeal from the District Court of the United States
for the Territory of Hawaii

FILED

APR 7 1948

PAUL P. O'BRIEN,
CLERK

No. 11786

United States
Circuit Court of Appeals
For the Ninth Circuit.

KANAME FUJINO,

Appellant,

VS.

TOM C. CLARK, Attorney General of the United
States,

Appellee.

Transcript of Record
In Two Volumes
VOLUME II
Pages 265 to 533

Upon Appeal from the District Court of the United States
for the Territory of Hawaii

(Testimony of Tokuichi Tsuda.)

Q. Do you remember approximately when he went there, and approximately when he returned from Japan?

A. I don't know the exact time, but it was sometime in March, I remember. [293]

Q. That he went to Japan, or returned?

A. That he left the Territory.

Q. Do you know approximately when he returned? A. Sometime in July.

Q. Now was it after Robert Murakami returned to the Territory that the matter of incorporation started to go ahead? A. That's right.

Q. And was it after that time when you received the instructions from Yamamoto or word from Yamamoto that the real property was to be transferred to Kaname?

A. It may have been after Mr. Murakami came back.

Q. Now at the time you were advised by Seitaro Yamamoto that the property was to be transferred, was any letter, telegram or anything else shown you by Yamamoto?

A. To my recollection, if I remember correctly, I think Mr. Yamamoto must have read the letter before Tsutsumi and myself.

Q. Have you any recollection of seeing the letter?

A. He had some correspondence before him.

Q. Did you look at it?

A. I didn't look into it.

Q. What is that?

A. I did not look into the letter.

(Testimony of Tokuichi Tsuda.)

Q. Could you see the letter?

A. Yes, I could.

Q. Could you see in whose handwriting it was?

A. Yes, that I was positive.

Q. In whose handwriting was it, if you know?

A. It must have been Yotaro Fujino's handwriting.

Q. Now this took place, as you say, in Seitaro Yamamoto's home? A. That's right.

Q. Not in the office? A. No.

Q. And he had that letter at his home, is that correct? A. Yes.

Q. Then after receiving his advice was when the powers-of-attorney were drawn, is that correct?

A. Yes.

Q. Have you ever seen that letter after that date?

A. No, I don't remember. I don't remember.

Q. Well, can you tell the Court anything about the habits of Yamamoto as to correspondence, whether he kept it all in the office, or whether he kept it all at home, or whether he had it in both places, if you know?

A. Well, Yamamoto, Seitaro Yamamoto, had not been around the store very much. He maybe came once a week, and probably would not be around for about two weeks, so, average, he may have showed around the store maybe about three or four times a month, and he has been home most of the time. [295]

(Testimony of Tokuichi Tsuda.)

Q. Over how long a period of time would you say that that conduct carried on?

A. Oh, I would say he has been that way since, oh, maybe while Mr. Fujino, Yotaro Fujino, was still in the Territory.

Q. He was one of these off-and-on workmen, is that it? A. That's right.

The Court: I am not sure from this man's testimony whether he is recalling that maybe Mr. Yamamoto had a letter from Mr. Yotaro Fujino which he read,—a letter this man actually saw and can tell us definitely that it was a letter from Yotaro Fujino, or whether he is recalling that, as I say, or actually saw it. I don't get it in my mind that he actually saw the letter.

Q. Well, will you answer that question. Did you actually see the letter on that occasion?

A. Yes, we sat opposite one another and he had some correspondence open before him, because I was near his table and looked into the table; and I was not sitting away from the table, and he was just telling what Fujino wanted him.

Q. Did he purport to read the letter to you?

A. Beg pardon.

Q. Did he purport to read the letter to you? That is, did he look down and read from the letter?

A. Yes, he was reading some part of the letter; told us what Fujino wanted. [296]

Q. Did he look at the letter, or what he was reading from, so that you could tell from the handwriting the person who had written it?

(Testimony of Tokuichi Tsuda.)

A. Well, from my observation, I would not make sure, but then I think it was Yotaro's,—Yotaro Fujino's writing.

Q. And relying upon that and upon the advice from the bank you sent the forms of powers-of-attorney on to Japan, did you?

A. Yes, that's right.

Q. Did you do that, or Seitaro Yamamoto address the correspondence and forward the various attorneys on to Japan?

A. Seitaro Yamamoto did that.

Q. And upon the return of those powers-of-attorney did you execute the deed; that is, you and your co-attorney-in-fact, Mr. Tsutsumi,—execute the deed that has been introduced here in evidence as Exhibit "H"? A. That's right.

The Court: That is the deed of the land owned by Yotaro Fujino to his son Kaname?

A. Yes.

Q. The deed I have just referred to is shown in the record as Plaintiff's Exhibit "H"? Is the signature there, Tokuichi Tsuda, your signature?

A. Yes, that's right.

Q. And in both places, both under Yotaro Fujino and [297] Chiyono Fujino? A. That's right.

Q. Now there has been introduced in evidence a mortgage from Yotaro Fujino,—Yotaro Fujino, also known as Yootaro Fujino, and Chiyono, to the Bishop National Bank of Hawaii, at Honolulu; the mortgage covering the property involved in Exhibit "H", the consideration being fifteen thousand dol-

(Testimony of Tokuichi Tsuda.)

lars. Will you tell the Court the reason for the giving of that mortgage of fifteen thousand dollars to the Bishop National Bank of Hawaii at Honolulu.

A. Yes, when the corporation took over the assets of Yotaro Fujino there was a mortgage on the property in the sum of fifteen hundred dollars, and there was also an unsecured note owing the bank for eighteen thousand five hundred dollars, and so since the corporation has taken all the liabilities the Bank wanted some more security to secure those liabilities that the corporation has assumed from Fujino, so they suggested in mortgaging the property to secure those unsecured loans.

Q. I see. This was an unsecured obligation owing by the old gentleman? A. Yes.

Q. And after that mortgage was given then the conveyance was later made to Kaname, is that right?

A. Yes. [298]

Q. Do you know whether Kaname ever endorsed that note for fifteen thousand dollars given to the bank at that time?

A. Yes, I recollect after the deed was signed I taken the deed down to the bank and to show them whether everything was in order, and they were satisfied with the deed, and they asked me at the time when Kaname was going to return, so I told them he must be back almost any moment, and suggested I leave the deed there until he returned, because they thought they would like to have him endorse the note.

(Testimony of Tokuichi Tsuda.)

Q. Then who recorded or registered that deed, do you know? A. Beg pardon?

Q. The deed, Exhibit H, who took it up to the record office or Registry of Conveyances? Did you or did someone else, if you know?

A. No, Kaname himself took it up.

Q. Now at the time of the incorporation was any stock issued to Kaname?

A. No, not at the time of the incorporation.

Q. Later was there stock issued to Kaname?

A. Yes.

Q. And was stock also later issued to his two sisters? A. Yes, that's right.

Q. Do you remember the number of shares that were issued to Kaname?

A. Yes, that's right; 200 shares to Kaname.

Q. How many to the girls, just approximately?

A. 117 each.

Q. 117 each? A. Yes.

Q. Was stock also issued to the old gentleman, Yotaro, and also to Chiyono?

A. That's right.

Q. Are you a stockholder? A. Yes.

Q. And was stock issued to you at about the same time?

A. At the time of the incorporation.

Q. Now was that stock paid for by Kaname, and the two girls, or what was done?

A. A note was taken for the stock issued to the children.

(Testimony of Tokuichi Tsuda.)

Q. A note was taken from all the children?

A. No, from Kaname, and yes, the note was taken from the two daughters.

Q. Do you remember the original amount of the note from Kaname?

A. About twenty thousand dollars.

Q. And from the girls?

A. Eleven thousand seven hundred dollars each.

Q. Who executed these notes? That is, who signed them?

A. The daughters signed their own notes, and a power-of-attorney, and the attorney-in-fact executed Kaname's note. [300]

Q. That is, you and Mr. Tsutsumi executed the twenty thousand dollar note, as attorneys-in-fact for Kaname, is that correct? A. Yes.

Q. Why was that done, or tell the Court the reason for the execution of that note, if you know?

A. We were advised by Seitaro Yamamoto, who told us that is the way Yotaro Fujino wanted, because he wanted to maintain the parental control for awhile, I guess.

Q. You say he wanted to maintain parental control for awhile? A. Yes.

The Court: These notes ran to the father, or to the corporation? A. To the father.

The Court: We will take a short recess.

(Recess.)

(Testimony of Tokuichi Tsuda.)

Q. (By Mr. Beebe): Mr. Tsuda, after Yotaro Fujino returned to Japan in 1934 or 1935 did he draw any salary from the Oahu Junk Company?

A. No, I don't remember drawing any salary.

Q. Well, did you send him any money, we will say between 1935, when he went to Japan, and 1939?

A. No, I don't remember sending any money.

Q. Well, we have been talking about salaries now. Were any moneys sent to him as earnings from Oahu Junk Company? [301]

A. No.

Q. You sent no funds as earnings from Oahu Junk Company to him in Japan?

A. That's right.

Q. Is that correct? A. Yes.

Q. And you sent no moneys representing salaries to him in Japan? A. No.

Q. Well, was he supposed to draw any salary?

A. No, nothing was decided on that, or was said about it.

Q. Did you deposit anything either as salary or as earnings by Oahu Junk Company to his account in any bank here in Honolulu? A. No.

Q. Do you know how he lived?

A. I don't know.

Q. Now after 1938 or 1939 did he receive any funds of any kind that you know of? A. No.

Q. Well, any shipments made from here to Japan, we will say of rubber or anything of that kind? Did he at any time, so far as you know, retain any of the moneys representing the purchase price of that material after it landed in Japan?

(Testimony of Tokuichi Tsuda.)

A. Well, there was some occasion when the shipment went [302] and he has collected the money on the other end, and we have not received the money.

Q. Well, on the other hand, during that period, were you importing—and I mean by you, the Oahu Junk Company, any cement from Japan to the Territory of Hawaii? A. That's right.

Q. Now were there any of those shipments that you did not pay for here?

A. Yes, there are a few shipments I think were taken care of up in Japan.

Q. Taken care of by whom, if you know?

A. By Yotaro Fujino.

Q. Can you give us any idea of the number of shipments originating here for Japan in which you did not receive the money, and the amount, if you know, representing the invoices?

A. I think there was a pretty large shipment of scrap iron that was made to Japan in 1938 or 1939, probably—I don't remember what year, and that was quite a sum of money involved. I think probably it would run, probably, around thirty-five thousand dollars, or so.

Q. Any other shipments originating here?

A. No, that is the only fixed or biggest amount that I could remember.

Q. Were there any shipments where the amount involved was one thousand or two thousand or five thousand dollars? [303]

A. There may be.

(Testimony of Tokuichi Tsuda.)

Q. Can you give us any idea of the number of shipments originating here, going to Japan, where you did not get the money here in Honolulu?

A. Well, one of them was a large shipment, and probably there was another one or two small shipments that involved probably around two or three thousand dollars, each shipment.

Q. So altogether it would be about forty-one thousand dollars?

A. Roughly, around forty or forty-one—rough figures.

Q. I appreciate that. And the other situation was the shipments of cement, or so forth, originating in Japan and destined for here, where you were not called upon to pay the original invoices?

A. That's right.

Q. How many shipments were there, if you can recall?

A. Oh, maybe two or more—about three or four shipments.

Q. Can you give us the amount of money involved in those shipments that were taken care of in Japan and not paid for by the Oahu Junk Company here?

A. I think that would not run more than five thousand dollars. That is what I think.

Q. It would not run more than five thousand dollars? A. Yes.

Q. Now with reference to the time, when were those cement [304] shipments made upon which payments were apparently taken care of in Japan?

(Testimony of Tokuichi Tsuda.)

A. After the shipments were made to Japan, and after the money was collected in Japan by Yotaro Fujino.

Q. Then you would say that he collected practically forty-one thousand dollars on shipments originating here and going to Japan, and had paid approximately five thousand dollars on merchandise coming from Japan to the Oahu Junk Company here, is that about it?

A. Yes, approximately.

Q. And that was either in 1938 or after that time?

A. Yes. It must be around about 1938 or 1939.

Q. I see. Prior to that time you know of no money that he got either from the Oahu Junk Company or from any source, is that correct?

A. No, no money was given.

Q. Now, after 1939 was any money sent him, either as salary, as dividends or anything else, other than this amount of money that you have referred to?

A. No, no money was sent.

Q. Now there has been testimony in the record here, Mr. Tsuda, about a tax liability of Yotaro Fujino's amounting to some \$11,800, as I recall. Do you know about that?

A. Yes, I do.

Q. That was an income tax for prior years, was it? [305]

A. Yes, that is additional income tax.

Q. Additional income tax? A. Yes.

Q. And for what years?

A. For the year 1940, I am quite sure.

(Testimony of Tokuichi Tsuda.)

Q. Now was any effort made to raise that \$11,000 other than by borrowing from the Oahu Junk Company. A. Yes.

Q. Will you tell the Court.

A. Mr. Fujino did not have any funds to meet that obligation, so we made application to the Foreign Funds Control to permit the attorney-in-fact to surrender 110 shares of Yotaro Fujino, which was at the par of \$100 each, in order to pay the income tax, and which was figured \$100 par, on 110 shares, which will raise the sum of about eleven thousand dollars.

Q. Surrender it to who?

A. To the corporation; treasury stock.

Q. And the ultimate effect of that would have been that 110 shares of stock would have gone back to the corporation as treasury stock? A. Yes.

Q. And the corporation would have given the eleven thousand dollars, is that correct?

A. Yes.

Q. I take it you were unsuccessful in getting that through [306] Foreign Funds, is that correct?

A. That was denied.

Q. All right. Then how was the money actually raised?

A. Well, we were up against it so we went—Tsutsumi and I, went up to Mr. Murakami's office to discuss how and what was the best procedure to take, and so after discussion we arrived to make application—We arrived to the point where we would make another application to the Foreign Funds Control requesting that the corporation will

(Testimony of Tokuichi Tsuda.)

advance or loan Kaname eight thousand dollars, and that he would in turn apply his monthly rental towards that advance the corporation would make him. And Yotaro Fujino had a banking account with the Yokohama Specie Bank, under the name—his deposit was under the name of Oahu Junk Company, and Oahu Lumber & Hardware Company—he had two accounts there, the two accounts totalling the sum of about thirty-eight hundred dollars, so we wrote all the details in the application, and that the corporation would advance the money with the understanding that Fujino will pay back from that savings he had with the Yokohama Specie Bank.

Q. Then in its final analysis, you loaned eight thousand dollars to Kaname? A. Yes.

Q. Taking his note back? A. Yes. [307]

Q. Where did that other thirty-eight hundred dollars come from?

A. The other thirty-eight hundred dollars was also advanced by the corporation, and after the money was in from the Yokohama Specie Bank that was returned to the corporation.

Q. I see. Did Kaname execute a mortgage in addition to his note, to the corporation, covering the property, or just give his note?

A. Just give a note.

Q. Now you mentioned the \$300 a month rental. When was that rental set; that \$300 a month?

A. That was sometime right after Kaname got back to the Territory. I think we had a discussion between Kaname and Tsutsumi and myself; it may

(Testimony of Tokuichi Tsuda.)

have been probably in May, probably in the early part of June; I cannot remember, but it must be not very long after Kaname got back to the Territory.

Q. And the result of that discussion was what?

A. The result of the discussion was that, that we agreed that the corporation will pay \$300 a month.

Q. Who was to pay the taxes, and so forth?

A. Well, the point really not come up, and on account of the rental being somewhat cheap, comparing from other places, I think the executive committee has agreed to have the corporation pay the taxes.

Q. How about the repairs and so forth? [308]

A. Yes, the repairs and all that.

Q. The corporation paid the repairs?

A. Yes; anything, all that the corporation was renting.

Q. So Kaname was to get \$300 a month net, in fact, is that correct? A. Yes.

Q. Now why weren't the payments made until, as I recall the record shows, sometime in August?

A. Well, I guess on account of the financial part of the corporation. The problem of money. They did not—Of course they had sufficient money to pay, but we thought of using money for the corporation, because it was not any hurry in paying the rent, because there was no demand or anything made.

(Testimony of Tokuichi Tsuda.)

Q. Then have you continued to pay—I mean, the corporation, continued to pay the rental of \$300 a month for the property? From, we will say, January, 1941?

A. Yes, I am sure the rent was paid from January, 1941.

Q. To whom first; to Kaname first?

A. Yes, I believe the check was made up to Kaname.

Q. Has there been any change in the payments? Have payments been made to anyone other than Kaname, we will say since the war?

A. Yes, the payments had been made—has now been made, to the Office of the Alien Property Custodian. [309]

Q. How long has it been since payments have been made to the Alien Property Custodian?

A. Right after the vesting order was received.

Q. And that payment has been how much a month?

A. Three hundred dollars a month.

Q. When Kaname borrowed this eight thousand dollars from the Oahu Junk Company to pay on account of his father's obligation, what was done with the \$300 a month that Kaname was paying back by way of rental?

A. That was applied to his loan from the corporation.

Q. And was any credit made to Kaname's twenty thousand dollar note?

A. I think that the lump sum of eight thousand dollars was applied toward the twenty thousand dollar note.

(Testimony of Tokuichi Tsuda.)

Mr. Beebe: I see. I think that is all.

The Court: I don't get that last. The lump sum of eight thousand dollars loaned to the plaintiff, against which the rentals were to be used to pay them off, was credited against the twenty thousand dollar note for stock?

Mr. Beebe: The twenty thousand dollar note that Kaname owed to his father.

The Court: Oh, that's right.

Mr. Beebe: Does your Honor understand my position?

The Court: I don't quite get that credit. \$300 came in, and it tended to cancel the \$8,000 loan to the corporation. [301] Take me the next step.

Mr. Beebe: And the eight thousand to his father. He had, in effect, paid the \$8,000 his father owed the government.

The Court: So he got the \$8,000 credit on his twenty thousand?

Mr. Beebe: On his twenty thousand.

Q. (By Mr. Beebe): Is that correct, Mr. Tsuda? A. Yes.

Cross-Examination

By Mr. Jansen:

Q. You are familiar with promissory notes?

A. Yes.

Q. And when payments are made on promissory notes is it your practice, your custom, to endorse the payment on the back?

A. No, not necessarily.

(Testimony of Tokuichi Tsuda.)

Q. Isn't that the usual way?

A. No. We would sometimes give a receipt. That is if the note was paid in full, maybe, but we would customarily give a receipt.

Q. Did you give Kaname a receipt for eight thousand dollars?

A. I probably did, yes.

Q. Did you endorse the eight thousand dollars on the note?

A. That I don't remember. [311]

Q. Will you produce a copy of the receipt? What kind of a receipt did you give him?

A. Just an ordinary receipt. If I had given him—and signed by Yotaro Fujino.

Q. Are you sure now that you gave him a receipt?

A. Why that is from my memory. I am not quite sure. I would have to look into the record to see if there is a receipt given.

Q. You don't know whether you gave him a receipt or not, do you?

A. Right off-hand, I don't know.

Q. Isn't it customary when a part-payment is made on the note to endorse the payment on the back of the note, or some place on the note?

A. I haven't done that.

Q. Well, let's see how the bank does it. You are familiar with that, aren't you?

A. Yes.

Q. And this Exhibit "K" is the original note that you signed on the fifteen thousand dollar mortgage, isn't it?

A. Right.

Q. And as each payment is made on the note it is endorsed right on the original note, isn't it?

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. And you know that to be the practice? [312]

A. Yes.

Q. You didn't do that on Kaname's note for twenty thousand dollars?

A. No, we didn't do that.

Q. And you are not sure whether you gave him a receipt? A. Yes, I am not sure.

Q. If you had given him a receipt would you have given it to him out of a receipt book such as you had around the office?

A. Sure, if we had given a receipt we would just tear the receipt blank from the receipt book and would have given to him.

Q. Would you make a credit on the receipt?

A. On the corporation receipt book? Yes, we have to keep. We have a copy.

Q. And are these receipts in a book so they are right in order? A. Yes, they are.

Q. Will you look for it: this evening will you look and see if you can find a copy of the receipt.

A. Oh, his receipt would not be in a corporation book.

Q. Where would you get the receipt from?

A. Oh, we had some blank receipt books there that is not connected with the corporation records, and if I had given him it would be just torn out from the blank, of that receipt [313] book, and just giving it.

Q. Why didn't you endorse the eight thousand on the note?

A. Well, we thought it wasn't necessary.

(Testimony of Tokuichi Tsuda.)

Q. Isn't it the usual thing to do?

A. Customary—the bank does all that, yes.

Q. But you didn't do it?

A. No; we didn't do it.

Q. You thought it was not necessary?

A. Yes, that's right.

Q. Now you have been working for Yotaro Fujino for 24—twenty some odd years; over 23, did you say? A. Twenty-one.

Q. Over 21, and Mr. Tsutsumi has also been working during that period of time for Yotaro?

A. No, I think he has been there about 17 or 18 years.

Q. 17 or 18 years? A. Yes.

Q. And that would be from what year, 1926, maybe? A. Maybe about 1927.

Q. 1926 or 1927? A. Yes.

Q. And Yamamoto had been with the Honolulu Junk Company, and came over to work for Yotaro after you started working for Yotaro?

A. That's right. [314]

Q. Was it after Tsutsumi started working for Yotaro that Yamamoto came over?

A. No, before Tsutsumi came.

Q. Now do you know of your own knowledge whether or not Yamamoto has worked for Yotaro at all before 1925 or 1926?

A. No, they have known each other quite a bit, but I believe he has not worked for Yotaro prior to 1925 or 1926.

(Testimony of Tokuichi Tsuda.)

Q. How old was Yamamoto when he died in 1941?

A. That I would not be able to remember. I know he was about two years older than Yotaro Fujino.

Q. And Yotaro Fujino in 1941 was around 55?

A. Fifty-five or seven; yes, I believe so.

Q. And that would be about right?

A. Yes.

Q. The reason that Yamamoto wrote the letters, as I understand it, is because he could write better Japanese than either you or Tsutsumi?

A. Yes, that's right.

Q. You had been working for Yotaro longer than Yamamoto? A. That's right.

Q. And Tsutsumi had been working for Yotaro almost as long as Yamamoto?

A. That's right.

Q. And Yotaro had selected you and Tsutsumi as attorneys-in-fact when he left for Japan? [315]

A. That's right.

Q. Rather than Yamamoto?

A. That's right.

Q. So the only reason that the correspondence was handled by Yamamoto was because he knew more about the written Japanese than you and Tsutsumi? A. That's right.

Q. And he did not hold any stronger position in the affections or respect or confidence of Yotaro than you or Tsutsumi, did he?

A. Well, in the sense that if he gave us the power-of-attorney it seems that way.

(Testimony of Tokuichi Tsuda.)

Q. It seems that you hold more confidence and more respect in Yotaro's mind, huh?

A. That's right.

Q. And from 1935—By the way, did Kaname go to Japan to go to school before Yotaro left for Japan?

A. That's right. He left about a year before Yotaro.

Q. A year before? A. Yes.

Q. Do you know where he stayed in Japan until his father and mother came there? A. No.

Q. But he left a year before his father and mother? A. That's right. [316]

Q. And then in 1935 Yotaro and Chiyono went to Japan, too? A. That's right.

Q. And before they left they gave you and Tsutsumi powers-of-attorney?

A. That's right.

Q. Which authorized you to handle all of their business affairs; all of their transactions here in Hawaii? A. That's right.

Q. In connection with the Oahu Junk Company?

A. That's right.

Q. In connection with any property they own?

A. Yes.

Q. And any bank account; everything?

A. Yes.

Q. And the letters that were written were really written from Yotaro to the Oahu Junk Company when he would write from Japan, after he left, were they not?

(Testimony of Tokuichi Tsuda.)

A. Well, anything that would pertain to the business would be written to the Oahu Junk Company.

Q. Yes, everything that pertained to the business, even, for example, the letter in regard to the incorporation, would be written to the Oahu Junk Company?

A. Well, I recall that all letters pertaining to Mr. Yotaro Fujino's personal matters, most of the letters were addressed to Saitaro Yamamoto, care of the Oahu Junk Company. [317]

Q. Care of the Oahu Junk Company?

A. Yes.

Q. In every case they would come to the office of the Oahu Junk Company? A. Yes.

Q. Whether they had to do with his personal matters, or whether they had to do with business matters, they would all come to the Oahu Junk Company's office?

A. As far as I seen the letters that came to the Oahu Junk Company was in that order.

Q. All that Yamamoto would do in regard to the business would be to tell you what was in the letters from Yotaro? A. Yes. that's right.

Q. And during 1935, through 1936 and 1937, and 1938 and 1939, Yotaro would give you instructions about what to do about this and what to do about that, from time to time, during those years, would he not?

The Court: Yotaro would give who instructions?

(Testimony of Tokuichi Tsuda.)

Mr. Jansen: Give him instructions in letters.

The Court: Give Yamamoto?

Mr. Jansen: No, give the attorneys-in-fact.

Q. I mean, he would send his instructions in letters? Let's say it that way. A. Yes.

Q. And those instructions with regard to the business [318] were directed to you and to Tsutsumi? A. That's right.

Q. But Yamamoto would read the letters for you? A. Yes.

Q. So you would be sure you got them right?

A. Yes.

Q. And then if you had any questions to ask with regard to what you ought to do in the business you would ask Yamamoto to write the letter, so that you would be sure that the questions would go through to Yotaro properly? A. Yes.

Q. He was sort of a correspondence secretary for the Oahu Junk Company?

A. That's right.

Q. But on matters of judgment, matters of discretion, in the handling of the business, when you didn't have a chance to obtain advice or the instructions of Yotaro, you and Tsutsumi would exercise the discretion; would exercise the judgment, would you not?

A. Yes, on these things that we were sure of that exercise.

Q. And if you were not sure you would write to Yotaro? A. We would consult Yamamoto.

Q. And he would write to Yotaro?

A. If he could arrive at a decision we would take his [319] discretion.

(Testimony of Tokuichi Tsuda.)

Q. But if he could not arrive at a decision he would write to Yotaro? A. Yes.

Q. And a decision would come back?

A. That's right.

Q. Now when Yotaro left in 1935, of course he owned all the business; you and Tsutsumi and Yamamoto had no ownership at all in the business?

A. That's right.

Q. So whatever you were doing you were doing for Yotaro? A. That's right.

Q. And you—you would, of course, follow his instructions; his directions, his advice, with regard to all matters about the business?

A. Not all; all matters of the business.

Q. What?

A. Not to all matters of the business. In the general routine of the business, and which was daily routine, buying and selling, and things like that, in the ordinary way, Tsutsumi and I used to handle the business.

Q. Before he left he said "You boys know how to do it." You have been with him for a long time, "You go ahead with the routine. You are working for me, anyhow"? A. Yes. [320]

Q. But on matters of discretion or judgment you would maybe consult with him or consult with Yamamoto, and he would write to Yotaro?

A. That's right.

Q. So, during that time you would shift, I suppose,—you did business in the junk business and had this hardware and lumber business, too, and

(Testimony of Tokuichi Tsuda.)

you also took in the money that you would collect in the various businesses that you handled there, and pay the bills, and what would you do with what was left over, the profits?

A. The profits was put in reserve of the company.

Q. In reserves? A. That's right.

Q. And from time to time you would send shipments of junk to Japan and Yotaro himself would perhaps collect the money?

A. Not from the time,—only about two or three occasions he did collect.

Q. Two or three? A. Yes.

Q. When he left for Japan did he have quite a bit of money with him?

A. No, I remember give him only \$300 in cash, after the steamer fares and everything was paid.

Q. Did he have other money?

A. I don't know. [321]

Q. How soon after he left for Japan did he collect on the shipments that were made there?

A. I think he collected on the shipments that were made there in 1938 or 1939.

Q. Didn't you send him some money between 1935 and 1938 to 1939?

A. No, I don't remember. I am positive we did not send him money.

Q. Do you have any idea what he used to live on?

A. I don't know.

Q. Do you know how he bought this house he had in Japan? A. No.

(Testimony of Tokuichi Tsuda.)

Q. Had he had an income from the business during the years before he left for Japan; did he collect money from the business?

A. From the Oahu Junk Company?

Q. Yes.

A. Well, he used to take whatever sum he wanted. He didn't draw any salary; he just took what he wanted.

Q. He may have accumulated a considerable sum of money before he left for Japan, besides the \$300? A. Maybe.

Q. Your best judgment is that he did?

A. Probably, because he did not get any money after that.

Q. He had no other business that you know of besides the [322] Oahu Junk Company here in Hawaii? A. Yes, nothing else.

Q. So whatever he had he must have earned or accumulated in the years he was here, before he left for Japan? A. That's right, yes.

Q. Then in 1938 he probably ran short of money so he collected the thirty-five thousand on that big shipment of junk? A. Yes, probably so.

Q. Did he write to you about that?

A. I don't recall.

Q. Did he write to Yamamoto about that?

A. I don't—He may have, yes.

Q. Did you set it up on the books of the business?

A. Yes, accounts receivable outstanding to Yotaro Fujino.

(Testimony of Tokuichi Tsuda.)

Q. At that time he owned the business?

A. Yes.

Q. But in order so that you could account for this shipment you put it in accounts receivable outstanding?

A. Yes, that's right.

Q. To Fujino; Yotaro Fujino?

A. Yes.

Q. That was around thirty-five thousand dollars?

A. Approximately.

Q. And then there were two or three other items that ran [323] it up to about forty-one thousand?

A. Yes.

Q. And against that the only credit that you entered during these years were these three or four shipments which, as you thought, ran to about four or five thousand?

A. I think so, yes.

Q. Did you have any correspondence about these outstanding accounts at all between Yotaro Fujino and Yamamoto or between Yotaro Fujino and you, that you know of?

A. No, not that I know.

Q. He told you he collected?

A. Yes, the letter would come to Yamamoto; Yamamoto is the one who told us about it.

Q. He wrote to Yamamoto and said "I collected that and I will keep that; just charge that off to me in the business?"

A. Yes.

Q. That is what you did?

A. Yes.

Q. Now when the corporation was organized in 1940 was that still outstanding as an accounts receivable, prior to the incorporation?

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. What happened to that when the business was incorporated?

A. I think the auditors must have written that off to some [324] account that I do not know.

Q. Written it off the books?

A. Yes; that wasn't taken over by the corporation.

Q. In other words, the corporation did not receive an accounts receivable from Yotaro Fujino for that balance of thirty-five thousand when they received the rest of the assets of the business at that time?

A. That's right.

Q. That is correct, is it not? A. Yes.

Q. It was written off? A. Yes.

Q. Now I think you said that in 1940, in October or November, Yamamoto called you and Tsutsumi to his house?

A. That's right.

Q. And told you that he had a letter from Yotaro Fujino, and he showed you the letter, did he?

A. Well, he did not exactly showed but he sat opposite us; we sat opposite one another, and he had some correspondence there from which he had told us what Fujino wanted to know.

Q. And that correspondence lay on his desk?

A. Yes, right before Seitaro Yamamoto.

Q. Did he pick up the letter and read the contents of the letter to you?

A. Well, no, he would just hold the letter this way, in [325] this position (indicating), and tell us what the letter stated.

Q. You could understand the spoken Japanese well? A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. And if someone who had it should read the letter to you; someone who was able to read it, while he read it to you would you know exactly what they were talking about? A. Yes.

Q. Although you might have difficulty in reading it, is that correct? A. Yes.

Q. But Yamamoto did not read this letter to you?

A. Well, he had the letter before me—before him, but I don't know whether he was reading from the letter or not, but I took it for granted that he was reading what was in the letter.

Q. Since you did not have any correspondence yourself, personally, with Yotaro, how did you know that was in Yotaro's letter?

A. Because while he was in the Territory I used to see his letters.

Q. You can also recognize that as Yotaro's handwriting?

A. Well, he has a peculiar way of writing, so it is something—

Q. But Yamamoto did not read from the letter; he just sort of said what was in it? [326]

A. That's right; yes.

Q. And Yamamoto told you that Yotaro Fujino wanted to go ahead with organizing the corporation? A. That's right.

Q. Told you that at that time? A. Yes.

Q. He told you that Yotaro Fujino in this letter said he wanted the stock issued in a certain way?

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. So many to himself; so many to his wife; so many to his three children?

A. I don't recall he mentioned about how many shares to be issued to each one.

Q. Well, did you get later instructions about that?

A. No, I don't believe I seen any instructions.

Q. How many shares—How do you know how many shares were to be issued to each one?

A. Well, Seitaro Yamamoto did all those distribution of figures.

Q. Well, when you were at his house that day didn't he say how much stock?

A. No, he didn't say how much stock.

Q. But did he say that the stock that was issued to the children,—that there should be notes back to cover it?

A. No, I don't remember his mentioning anything about the [327] notes.

Q. He didn't say anything about a note?

A. No.

Q. How did you get the idea of taking these notes back from the children?

A. Well, it was Mr. Seitaro Yamamoto's idea.

Q. You think that Mr. Yamamoto was carrying out instructions of Yotaro, that Yotaro was giving him in letters, when he expressed these ideas?

A. Yes.

Q. You feel that way?

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. In any event, the number of shares of stock and the notes that would go from the children to Yotaro were, you believe, in amounts on instructions from Yotaro, is that correct?

A. Yes, that's right.

Q. But you had not heard these specific instructions in any letter? A. No.

Q. Yamamoto had not referred to any letter to describe these specific instructions to you?

A. No, nothing that I can recall.

Q. But you do know of your own knowledge that the reason for taking the notes back from the three children was so that [328] the father could exercise control; you said "parental control?"

A. That's right.

Q. He wanted to exercise parental control over the corporation? A. Yes, for awhile.

Q. Now at the same time that you were at Yamamoto's house did he also talk about the real estate?

A. Yes, he did.

Q. And did he also talk about the mortgage for fifteen thousand dollars that was to be placed on the real estate?

A. No, that was not mentioned.

Q. When was that first thought of?

A. Well, when I went to the bank, and told them that we wanted a deed,—to deed the property over to Kaname. Well, they felt that since the corporation has taken over Yotaro Fujino's liability in that Oahu Junk Company, and had secured loans from the bank for \$18,500, so it was the bank's suggestion to secure that loan; they would like to have the property mortgaged.

(Testimony of Tokuichi Tsuda.)

Q. Let me see if I understand you correctly. In October or November, 1940, you were at Yamamoto's house? A. That's right.

Q. And Yamamoto expressed the idea that the land was to be transferred to Kaname?

A. That's right. [329]

Q. That is correct? A. Yes.

Q. But did not express the idea that the land was to be mortgaged? A. No.

Q. But you were attorney-in-fact for Yotaro Fujino along with Tsutsumi?

A. That's right.

Q. That was in, to be sure now, in October or November? A. Yes.

Q. Of 1940? A. Yes.

Q. Is that correct? A. Yes.

Q. And the corporation was organized in December, 1940, or late in November?

A. Yes, late in November.

Q. And the stock was issued?

A. A bill-of-sale.

Q. Was transferred between Yotaro and the corporation in November, or early December, 1940?

A. Yes, that's right.

Q. And the land was included in that bill-of-sale? A. That's right.

Q. Why was that?

A. Because Fujino did not want to include the land in the [330] corporation?

A. He wanted to give the land to the son.

(Testimony of Tokuichi Tsuda.)

Q. He wanted to give the land to his son?

A. Yes.

Q. And that was anticipated, you say, when the corporation was organized in December of 1940?

A. No——

Q. Or even before?

A. Way before, yes. That was explained to us by Yotaro Fujino when he left for Japan in 1935.

Q. Oh, that some day he would do something about that?

A. Yes, in 1935 he told us about what he intended to do in the latter years.

Q. During the incorporation, when it was organized, and when it received the business of Yotaro Fujino, the corporation assumed all of Yotaro Fujino's obligations? A. Not all.

Q. With some exceptions; generally, anyhow,—the twenty thousand dollars? A. That's right.

Q. And in March, 1941, you were going to deed the property to Kaname? A. Yes.

Q. Is that correct? A. Yes. [331]

Q. But the bank says, before you did it, "you put on a mortgage?" A. That's right, yes.

Q. And now you put on a mortgage for Yotaro?

A. Yes, that's right.

Q. And when you put the mortgage on you were acting for Yotaro? A. That's right.

Q. So even if it was understood in October or November that the land was going to Kaname, even in March, you acted with regard to the land for Yotaro? A. That's right.

(Testimony of Tokuichi Tsuda.)

Q. Well, had Yotaro Fujino told you about it; to put that mortgage for fifteen thousand on the land? A. No.

Q. But in doing it you were acting for him?

A. Yes.

Q. Now with regard to the land you actually did not pay any rent on this land until August, 1941, is that correct?

A. The payment was made in August, 1941, in a lump sum, yes.

Q. And you had decided, you say, a little while before that, perhaps some months before that, to pay \$300 a month, is that correct?

A. That's right. [332]

Q. And you and Tsutsumi had decided how much should be paid?

A. Well, Kaname was in the conference, so the three of us had, at the conference, discussed about that.

Q. And in that conference who were you acting for, Kaname or Yotaro or Yotaro's wife? You had powers for each one. Who were you acting for?

A. I was acting for the corporation.

Q. For the corporation? Well, with regard to these powers-of-attorney which you had who were you acting for?

A. The power-of-attorney at the time,—the property was already over to Kaname, so the power-of-attorney didn't have any bearing on the rental situation, so far as I was concerned.

Q. You were attorney-in-fact for Yotaro?

(Testimony of Tokuichi Tsuda.)

A. Yes.

Q. And Chiyono? A. Yes.

Q. And still for Kaname? A. Yes.

Q. And with regard to these three who were you acting for, in this conference, any of them?

A. No, none of them.

Q. Had you received any instructions from Yotaro with regard to how much rent should be paid? [333] A. No.

Q. But you and Tsutsumi fixed the amount?

A. We do not fix, but we told Kaname that was——

Q. Well, you told Kaname “We think the corporation should pay \$300 a month?” A. Yes.

Q. If that is all right, the corporation will pay \$300 a month? A. Yes.

Q. And Kaname said that is all right?

A. Yes.

Q. And he made no demand on you for rent before that time? A. No.

Q. And, in fact, made no demand on you for rent for two or three months? A. No.

Q. How was it that you came around to paying him rent in August, 1941?

A. Well, probably the company did not,—I don't mean that the company did not have the money to pay, but we thought of utilizing the money for the corporation as much as or as soon as possible, because the company would be needing money from time to time, and we found out that the company was in a position where we could pay out the rental.

(Testimony of Tokuichi Tsuda.)

Q. Did Kaname at any time make a demand on the company [334] for rent? A. No.

Q. No, he did not? A. No, he did not.

Q. Did he at any time ask you to sit down with him, to fix the amount of rent? A. No.

Q. That was entirely initiated from your side, you and Tsutsumi, you said "Come on Kaname; we better sit down and see what rent should be paid."

A. Yes, it may have been.

Q. Is that your best recollection?

A. Yes, that is my best recollection.

Q. Now when you were discussing rent did you also at the same time discuss the freezing of Yotaro's bank account?

A. No, I don't remember discussing anything about that.

Q. Well, Kaname told us a little while ago that you and Tsutsumi told him that he should start a checking account, do you remember that?

A. No, we haven't told him that.

Q. He said you did?

A. He did, yes, but I don't remember telling him anything of that sort.

Q. He also said that you discussed the freezing of Yotaro's bank account? [335]

A. Freezing?

Q. Yes, you know the freezing order?

A. Yes.

Q. You know when it went into effect?

A. Some time in July, 1941, I think.

Q. And all accounts of Japan nationals in Japan were frozen at that time, were they not?

(Testimony of Tokuichi Tsuda.)

Q. And that included Yotaro's account and Chi-yono's account? A. Yes.

Q. And nothing could be paid out of them without a license from Foreign Funds Control?

A. Yes.

Q. That is why you applied for this license later on? A. Yes.

Q. And Kaname testified that when you talked about rent you talked about freezing, too, do you remember that? A. Freezing, too?

Q. Yes, at the same time you were talking about rent?

A. I don't know what "freezing, too."

Q. "Also." You talked about rent; you also talked about freezing? A. Yes.

Q. And isn't it a fact that you told Kaname "you better [336] put this money in your account, because if you put it in your father's account it would be frozen?"

A. No, we haven't said anything of that sort.

Q. You did not? A. No.

Q. Well, am I to understand that the money was short with the Oahu Junk Company during May, June and July, and the first part of August, and that is why you did not pay any rent to Kaname?

A. No, the money wasn't short. We had sufficient money to pay, but we will be needing money from time to time, so we thought we would pay him at a later date when we thought the company was in a position to do so.

(Testimony of Tokuichi Tsuda.)

Q. You had the money to pay the rent?

A. That's right.

Q. But you did not pay it?

A. Yes, that's right.

Q. Because Kaname had made no demand on you for it? A. That's right.

Q. And he never did make any demand on you?

A. No.

Q. And you, of your own initiative, paid that rent, in August, 1941? A. That's right.

The Court: It is after four. We will adjourn for today, until tomorrow morning at nine.

(Adjourned to 9 a.m., November 7, 1946.)

Thursday, November 7, 1946, 10:23 A.M.

The within-entitled matter came duly on for further hearing, all parties being present as before, whereupon the following further proceedings were had and testimony taken:

(The Clerk calls the case for further trial.)

Mr. Jansen: By the way, The Executive Order Number of that executive order is Order Number 9788, File 11, Federal Register 11.981, an Executive Order of the President transferring the functions of the Alien Property Custodian's office to the Attorney General's office.

The Court: Thank you.

And the parties are ready for further trial?

Mr. Beebe: Yes, your Honor.

Mr. Jansen: We are ready.

TOKUICHI TSUDA

having been heretofore sworn, resumed the stand as a witness, and continued his testimony as follows:

Cross-Examination
(Resumed)

By Mr. Jansen:

The Court: Mr. Tsuda, you are mindful of the fact that you are still under oath, and you may proceed with the cross-examination.

Q. Mr. Tsuda, I am not clear in my mind whether all of the details of the incorporation, the issuance of the stock, and all of that, were discussed between you and Mr. Yamamoto [338] in that time between,—in October or November, 1940.

A. Yes, we had some general discussion of that.

Q. For example, it was discussed at that time that the corporation would be formed, and all of the assets of Yotaro Fujino would be transferred to the corporation except the real estate?

A. That's right, yes.

Q. And that stock would be issued at that time,—you didn't know just how many shares to each, is that right?

A. Yes.

Q. You were quite familiar with the Oahu Junk Company's business?

A. Yes, I was.

Q. And I suppose that when you discussed this with Mr. Yamamoto in 1940, when he had that letter from Yotaro, you discussed in general that the personal property, the good-will, and the fixtures

(Testimony of Tokuichi Tsuda.)

and equipment, and inventory, would be transferred to the corporation to be formed?

A. That's right, yes.

Q. And the corporation would assume the obligations of Yotaro Fujino's office?

A. Some of the obligations, yes.

Q. Some of the obligations? A. Yes.

Q. Well, were there some obligations that were not assumed by the corporation? [339]

A. No,—I beg your pardon. Some of the assets, I believe; not the obligations.

Q. Well, on the books of the business on November 1st, 1940, there were certain outstanding obligations of Yotaro doing business as Oahu Junk?

A. That's right, yes.

Q. And were all of those obligations assumed by the corporation, when the corporation was formed, and the bill of sale was given to it?

A. Yes, all the obligations were assumed.

Q. Did you see the copy of the bill-of-sale that has been offered in evidence?

A. With the exception of a few items, I recall.

Q. This is Defendant's Exhibit 4. This Defendant's Exhibit 4, is that a copy of the bill-of-sale?

A. Yes, it is.

Q. And attached to it are the assets and liabilities. Do you recognize that? A. Yes, I do.

Q. In the liabilities, there is \$30,000 in liabilities,—Was that all of Yotaro Fujino's outstanding obligations? A. Yes, it was.

(Testimony of Tokuichi Tsuda.)

Q. And of that thirty thousand, twenty thousand dollars was an obligation to the Bishop National Bank? A. That's right. [340]

Q. How was the other ten thousand?

A. The obligation of ten thousand was to two parties, Mr. Nogawa and Mr. Murakami,—five thousand dollars each.

Q. Do you mean Mr. Murakami, the lawyer?

A. Yes, that's right.

Q. What did you owe him five thousand dollars for?

A. Well, we needed the money, so we borrowed from him.

Q. When did you borrow that?

A. Oh, maybe about,—I don't quite remember, but probably around about 30—let's see, about 1939,—I am quite sure; about '39.

Q. About 1939?

A. Sometime in 1939, probably.

Q. Five thousand dollars in cash?

A. I don't remember whether it was in cash or check.

Q. Well, then when the corporation was transferred, or, say, organized, in 1940, you had \$55,000. in cash in the banks, did you not?

A. I don't remember the figures.

Q. I should say fifty-five thousand in cash and accounts receivable. You had cash in the bank of \$16,000., is that right?

A. Sixteen thousand dollars in the bank, and accounts receivable of fifty-seven thousand dollars, but the accounts receivable is not what is cash; we

(Testimony of Tokuichi Tsuda.)

didn't have these [341] accounts receivable.

Q. You had sixteen thousand in the bank?

A. Yes, that's right.

Q. Is that about the usual balance that you carried in the bank?

A. Yes, that is about the usual. Sometimes it goes as low as maybe five thousand.

Q. Do you recall the intent of this loan of five thousand? Do you know what that was for, the one from Murakami?

A. Well, we have been importing lumbers and so forth from the mainland, and when we had the lumber, it probably amount to around about eight or nine or ten thousand dollars, it was in order to meet those obligations.

Q. But you had a line of credit at the Bishop Bank of around thirty thousand, didn't you?

A. Yes, but sometimes that credit would not cover that.

Q. And do you mean the thirty thousand would not cover it? A. That's right.

Q. Do you remember the exact intent of Murakami's loaning you five thousand dollars?

A. No, I don't remember for what intent.

Q. Were you advised in any respect,—were his fees in any respect involved in that five thousand dollars? A. His fees?

Q. Yes. A. No.

Q. You are sure of that? A. Yes.

Q. How was it that you went to Murakami rather than the Bishop Bank for the five thousand?

A. Mr. Yamamoto went.

(Testimony of Tokuichi Tsuda.)

Q. To Murakami? A. That's right.

Q. Did you give Murakami a note for it?

A. Yes, we did.

Q. Who signed the note?

A. Two, the attorney-in-fact.

Q. And that, you think, was in 1939?

A. If I am not mistaken.

Q. In the early part of 1939 or the latter part of 1939?

A. Well, probably around about the middle.

Q. About the middle of 1939?

A. I would not say as to that.

Q. You do not remember at all the occasion for needing the five thousand? A. No.

Q. Did you ask Yamamoto to raise five thousand dollars?

A. Probably we discussed that we needed some money, so he mentioned all the loans from both of those parties. [343]

Q. Had you raised money from Murakami before? A. No.

Q. That was the first time. Had you raised money from this other party? Nakaya?

A. No.

Q. Was that the first time? A. Yes.

Q. Who is Nakaya?

A. He is something related to Yamamoto.

Q. Is Murakami related to Yamamoto?

A. No.

Q. You don't remember at all the reasons for needing the five thousand dollars?

A. Not the particular reason, yes.

(Testimony of Tokuichi Tsuda.)

Q. You are sure that was in the middle of 1939?

A. Well, to my recollection the condition was there in about 1939.

Q. Now you are sure of that?

A. Well, it has been quite away backwards, I cannot——

Q. Well, 1939 was a year before the corporation was formed. Might it have been 1938?

A. I cannot get my recollection on that.

Q. You don't know whether it was 1938 or 1939 or 1940? Could it have been 1940?

A. No, I didn't think it was in 1940; I think it was prior [344] to 1940.

Q. Do you know how long prior to 1940?

A. No, that I don't remember.

Q. You don't remember? A. No.

Q. That was a pretty big item, wasn't it, five thousand dollars?

A. Yes, but it has been quite sometime now. It has been four or five years. It is pretty hard to remember.

Q. Had you authority from Yotaro Fujino to borrow that five thousand dollars? A. No.

Q. No authority from him? A. No.

Q. Had you authority from Yotaro Fujino to borrow the five thousand dollars from Nakaya?

A. No.

Q. And you think that at the time you borrowed this five thousand dollars from Murakami you had used up your thirty thousand dollar line of credit at the Bishop Bank, huh?

(Testimony of Tokuichi Tsuda.)

A. It must have been, otherwise we would not need the money.

Q. Well, now, when you were discussing this new corporation, that Yamamoto discussed with you, in November,—October or November, 1940, didn't you discuss the fact that the corporation [345] would need the land to operate on?

A. Oh, yes, if the corporation would operate it would have to have the land to operate on.

Q. In fact, without the land the corporation,—it would be practically impossible for the corporation to operate?

A. Well, then, if we could rent the land, the premises, then it was all right.

Q. Well, did you discuss with Yamamoto in October or November the idea of renting the premises?

A. No, that I don't recall. I don't remember.

Q. Well, weren't you interested at all in knowing whether or not the corporation was going to have some place to operate?

A. Well, we knew that Kaname being one of the principal stockholders he would not throw the corporation out entirely.

Q. Did you know at that time that he would not throw the corporation out entirely?

A. Evidently——

Q. You also know that as soon as Yotaro had transferred the land to him that Kaname would rent the land to the corporation, at that time, didn't you?

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. And that was understood, wasn't it, in October or November? A. More or less, yes. [346]

Q. Certainly. It was also understood that Yotaro wanted to take these notes back from Kaname and his two sisters, because he didn't want them to squander the money? A. That's right.

Q. And that applies both to Kaname and to the sisters? And it was also understood at that time that in addition to the fact that Kaname would lease the land to the corporation, that the corporation could stay on the land as long as it wanted to?

A. That's right, yes.

Q. And that was also part of the instructions from Yotaro to Yamamoto?

A. I don't know whether any instructions came on that point.

Q. You discussed it at that time? A. Yes.

Q. Yotaro must have mentioned it in his letter?

A. No, I don't remember his saying anything about the rental arrangements, or anything of that sort.

Q. Well, at least between the three of you, Yamamoto, Tsuda and Tsutsumi, it was clearly understood? A. Between the three of us, yes.

Q. Yes? A. Yes.

Q. It was clearly understood that notwithstanding the [347] transfer to Kaname the corporation would continue to stay on the land and use the land?

A. Yes, since we paid the rent.

Q. At that time you did not know what the rent would be or whether there would be any rent?

(Testimony of Tokuichi Tsuda.)

A. No, we had not discussed it at that time, yet.

Q. It was not until Kaname came back to the Territory that any question of rent at all came up?

A. That's right.

Q. And you and Tsutsumi were the two who started the discussion on that?

A. That's right.

Q. Well, now, will you try again and think hard and see if you can remember when it was that Murakami loaned Yotaro Fujino five thousand dollars.

A. Well, probably it was 1938.

Q. You think now it might have been 1938?

A. About 1938.

Q. But you are not sure?

A. Sometime 1938 or 1939, one of those years.

Q. 1938 or 1939? A. Yes.

Q. Now with reference to the income tax of Yotaro Fujino, how was it that the corporation was interested in paying Yotaro Fujino's income tax? [348]

A. Well, we thought that we should try to help him out in paying his income tax, because he has been one of the stockholders of the corporation at that time.

Q. Is that the only reason?

A. And there was no other way of raising the money otherwise, if the corporation did not make a return.

Q. Why didn't you let the income tax department go after Yotaro for that income tax; it was his obligation, wasn't it? A. That's right.

(Testimony of Tokuichi Tsuda.)

Q. Why did the corporation assume to take care of that obligation?

A. Well, that I don't know. I didn't make the demand to him.

Q. And was it your suggestion that Kaname borrow eight thousand dollars from the corporation?

A. Yes, we discussed,—the three of us discussed; Tsutsumi, Kaname and me discussed.

Q. Who was it suggested that Kaname borrow eight thousand dollars? A. Probably I did.

Q. You did? A. Yes.

Q. But other than the fact he was one of the stockholders in the corporation, you had no other reason for undertaking to arrange to pay his income taxes? [349] A. That's right; yes.

Q. Now did you arrange to have the powers-of-attorney for Chiyono and Kaname prepared in December or November of 1940?

A. Kaname's power-of-attorney was prepared sometime about the same time as the corporation was formed.

Q. And Chiyono's power was prepared about the same time?

A. Chiyono's was a little after that, when the discussion of the deeding the property to Kaname came up.

Q. Of what?

A. When the discussion of the deeding of the property to Kaname came up.

Q. You had Chiyono's power before that?

A. Before that, yes.

(Testimony of Tokuichi Tsuda.)

Q. But how long after the corporation was formed was it that Chiyono's power,—you know Chiyono is Yotaro's wife?

A. Yes, that's right.

Q. You say that was after the corporation was formed, and when you were discussing the idea of the transfer?

A. That's right, yes.

Q. How long was that?

A. Oh, maybe a couple of weeks after.

Q. Oh, a couple of weeks after? A. Yes.

Q. Well, who prepared Kaname's power? [350]

A. I think Mr. Murakami did.

Q. And who prepared Chiyono's power?

A. I mean, Chiyono's power, Mr Murakami did.

Q. And who prepared Kaname's power?

A. Mr. Murakami did.

Q. Who prepared Yotaro's power?

A. On the second power, you mean?

Q. Yes.

A. It was done through the bank, the Bishop National Bank. I don't know who did it, but it was done through that bank.

Q. And how long after the two first powers were prepared was this second power prepared, the second power of Yotaro prepared,—the last one, I mean?

A. That was prepared around about the middle of December, if I am not mistaken.

Q. The middle of December? A. 1940.

Q. And when was it sent to Yotaro?

A. It was sent right after that, when we received the forms back.

(Testimony of Tokuichi Tsuda.)

Q. He said he got it sometime late in January. Does that change your recollection of it at all?

A. No, the two must have been sent out at the same time.

Q. What two?

A. Mrs. Fujino and Yotaro Fujino's.

Q. You think they were? [351]

A. They were.

Q. But Mrs. Fujino executed her power on December 23d, 1940? A. Just about the time.

Q. And Yotaro Fujino executed his power on February 20, 1941? A. That's right.

Q. Do you think they were both sent together?

A. To my recollection, yes.

Q. But Yotaro did not execute his until almost three months after his wife's, or two months, anyway? A. That's right.

Q. Do you know of any reason why he delayed in executing his power?

A. Well, in most of the time he was not at his home, from what I understand; he has been traveling, and it may be for that purpose that it was delayed.

Q. You think that might have been the reason?

A. Yes.

Q. He did not receive it, according to his letter to you, until January 20th? A. No.

Q. If that was true, how could Mrs. Fujino have executed her's in December?

(Testimony of Tokuichi Tsuda.)

A. Well, probably Mrs. Fujino,—Probably Mr. Fujino was not in, and when he got back from some trip he wrote a letter [352] in January, that is my opinion.

Q. Now, Murakami testified the other day that after he prepared the deed from Yotaro Fujino to Kaname Fujino you and Tsutsumi signed it?

A. Yes.

Q. And then he told you to go up and record it?

A. No,—

Q. That is what he testified to.

A. No, he told us to take it down to the bank, and let the bank look over that, and if it was all right to go and have it recorded.

Q. You took it to the bank? A. Yes, first.

Q. Did you take it down and have it recorded?

A. No, we took it to the bank first, and they asked me when Kaname would be back, and I told him he would be back most any moment, and they said “You might as well leave this that way,” and they wanted Kaname to endorse a note to that, and the deed was left there with the bank.

Q. There is one other question that disturbs me, Mr. Tsuda. You say that Yamamoto handled all the correspondence between Yotaro and the Oahu Junk Company? A. Yes.

Q. And who handled the correspondence after Yamamoto left for Japan? [353]

A. Some of the letters came in, but then I believe we did not answer questions,—we did not answer most of these letters.

(Testimony of Tokuichi Tsuda.)

Q. How long did you wait before you answered the letters?

A. Well, at the time Mr. Yamamoto left,—when Seitaro Yamamoto left, he told us if any letters should come it would not be necessary to answer, because he would be contacting those people on the other end.

Q. But this correspondence that was brought up yesterday shows that you were writing back and forth; you sent telegrams back and forth, and sent letters back and forth, didn't you?

A. Well, we may have written. I might maybe have asked someone to write maybe once or twice, yes.

Q. In any event, after Yamamoto went to Japan, Yotaro would write to you from time to time and tell you what to do about this and what to do about that?

A. No, I don't recall that.

Q. Didn't Yotaro write to you from Japan and tell you to elect Kaname president?

A. Yes, that was a telegram we received in August.

Q. In August? A. August 1941.

Q. August 1941. Yotaro wrote to you and told you to elect Kaname president?

A. He sent a telegram down, probably dated August 20, [354] 1941, yes.

Q. He also wrote a number of letters to you about different things that you were supposed to do, didn't he?

A. I don't recollect.

(Testimony of Tokuichi Tsuda.)

Q. Don't you recall that he wrote to you about the shipments of scrap rubber from here, and wrote to you about the shipment of cement from Japan?—

A. Yes.

Q. A number of times, after Yamamoto went to Japan?

A. Yes, probably he did, yes.

Q. Sure he did. And he wrote to you, or sent this telegram and told you to elect Kaname president of the company?

A. That's right, yes.

Q. And you answered back and said Kaname has been elected and so don't worry, everything is all right.

A. Yes, we let him know of that.

Q. Is that the substance of your telegram to him: "Kaname has been elected president; don't worry, everything is all right"?

A. After we received this telegram, yes; we let him know that he was elected president, I guess.

Q. And did you write him such a cable or such a telegram: "Kaname has been elected president. Everything is all right. Don't worry."?

A. I guess it may have been, yes. [355]

Q. And you sent money over to Japan from here at Yotaro's instructions, didn't you?

A. The money was sent to Hongkong.

Q. To Hongkong?

A. To Seitaro Yamamoto, I think.

Q. But Yotaro had instructed you to send that money?

A. Yes.

Q. Two thousand dollars in July, 1941, wasn't it?

A. Yes, I think so.

Q. On July 14th 1941, about that time?

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. And then Yotaro Fujino and Yamamoto asked you to get certificates and affidavits from the Bishop Bank so that he, Seitaro Yamamoto and Fujino could travel to the Philippines, which was United States territory, didn't he? A. Yes.

Q. And you did that?

A. Yes, I believe I did, yes.

Q. Now it was in October, 1941, that you sent a wire to Yotaro telling him that Kaname had been named president?

Mr. Beebe: If counsel has the telegram I suggest he show it to the witness.

Mr. Jansen: I don't have the telegram. I have a reference to it in the letter.

A. It may have been, yes. [356]

The Court: October?

Q. October, 1941. Yotaro Fujino and Chiyono Fujino had sent you proxies so that you could vote their stock; do you remember that?

A. No, I don't remember that.

Q. Well, look at this letter. You can read Japanese, can't you?

A. No, I would not understand.

Q. You would not understand? A. No.

Q. Well, did you, in October, 1941, send a cable to Yotaro Fujino in which you said "Received both of your proxies. Have made Kaname president. Please fill out each."

A. No, it must have been the stock certificate, probably; not the proxies.

(Testimony of Tokuichi Tsuda.)

Q. You mean that Yotaro and Chiyono sent their stock certificates back?

A. I think so. I don't remember receiving any proxies.

Q. Well, did you say, received something—maybe stock certificates, but did you say "Have made Kaname president. Please fill out each." Was that part in the telegram?

A. Maybe, yes.

Q. After the corporation was formed you sent monthly reports on how the business was getting along, to Yotaro Fujino? [357]

A. Yes, Yamamoto would send.

Q. And after Yamamoto went away Yotaro Fujino wrote to you and asked you to send the same monthly reports, didn't he?

A. No, he didn't make any request.

Q. Take a look at this letter and see if it does not—Can you read them?

A. No.

Q. You can't read them, huh?

A. No.

Q. What would you do when you would get these letters?

A. Have somebody read it to me.

Q. Do you remember getting this letter dated June 13, 1941?

A. I may have somebody read this letter.

Q. Who would you have read it to you?

A. Maybe one of the boys in the store who understood how to read.

Q. How about Kaname?

A. Kaname may have read it to me.

Q. Didn't Kaname read all of the correspondence from his father when he was here, after May, 1941?

A. Not all the correspondence.

(Testimony of Tokuichi Tsuda.)

Q. He left that up to you?

A. No, not that. At his convenience he read some of them. [358] If he was out, if we wanted to know about it, we let some other fellow read to us.

Q. Do you recall receiving a letter that was read for you by Kaname, or someone else, asking for monthly reports; a letter dated June 13th or about that time, 1941?

A. If that is in the letter, then I must have received it.

Q. And Yotaro Fujino wrote to you late in July or early in August about the effect of the freezing order too, didn't he?

A. July or August?

Q. Yes. A. He may have, yes.

Q. Do you recall that he did?

The Court: 1941?

Mr. Jansen: Yes.

A. He may have, yes.

Q. What is that?

A. If that is in the letter, he must did it.

Q. Do you recall that Yotaro wrote you about the freezing, and suggested that maybe some sort of a barter system could be set up? You know what "barter" is, don't you?

A. No.

Q. Barter? A. Barter?

Q. Barter; changing one for the other. They sent, let's [359] say, shoyo or beer or cement from Japan, and you would send molasses or rice back.

A. Yes, I guess so.

Q. Do you remember him writing to you about that?

(Testimony of Tokuichi Tsuda.)

A. Yes, I recall he wrote something like that.

Q. So he wrote to you about a number of things after Yamamoto went to Japan in 1941; a number of things relating to the business of the company?

A. Yes, he might have written.

Q. You recall that he did, don't you?

A. Yes.

Q. And when you would get these letters from Yotaro you would try to carry out his instructions as carefully and completely as you could?

A. That's right, yes.

Q. Who did you talk to at the Bishop Bank about the transfer from Yotaro to Kaname?

A. I quite could not recollect, but I think when I went to the bank, went down to the bank, to my recollection I think I must have spoken to Mr. Stanley at the Bishop National Bank.

Q. Mr. Stanley? A. Yes.

Q. Are you sure you didn't talk to Mr. Waterhouse?

A. No, I don't—Probably I spoke to Mr. Waterhouse, and [360] he referred me over to Mr. Stanley, probably.

Q. How about Mr. Tyler?

A. No, I don't think so, Mr. Tyler.

Q. Have you been able to find the receipt that you gave Kaname for eight thousand dollars on the note from Kaname to his father?

A. No, we are unable to locate.

(Testimony of Tokuichi Tsuda.)

Q. You haven't been able to find any receipt?

A. No.

Q. There is one other thing, Mr. Tsuda. You said Yamamoto came into the office only two or three or four times a month. Is that correct?

A. Most of the time, yes.

Q. And how long would he stay?

A. He stayed, oh, maybe, about two or three hours.

Q. Two or three hours?

A. Or maybe one hour, maybe three hours, the longest, probably.

Q. Three hours at the longest? A. Yes.

Q. So if he came in four times a month he would not spend over 12 hours in the whole month at the office?

A. Yes, he did most of the work at home.

Q. Did he have any of the books of the company at home? A. No. [361]

Q. Did he have any of the accounts of the company? A. No, no accounts.

Q. All he had to do with was the correspondence, is that right? A. That's right.

Q. Between Yotaro and the Company?

A. That's right.

Q. Nothing else? A. No.

Q. Then from time to time you would seek his advice with regard to various transactions?

A. Well, with anything that was difficult to solve, he is the one who used to advise us, yes.

(Testimony of Tokuichi Tsuda.)

Q. But he would spend as little time as one to three hours and not more than two, three or four times a month?

A. I would say sometimes he has been down there the whole day, when he feels a little better, but on the average, yes.

Q. What else did he do? Did he have any other business interests?

A. Well, he used to go around quite a bit to these various industrial places looking over junks and all that stuff when he felt better; making contacts, now, like with scrap iron and all that stuff; he used to handle all of that.

Q. Do you mean he would buy it?

A. Make the price arrangements, and all that stuff. [362]

Q. Who bought the scrap iron after he left?

A. Haven't bought any scrap iron.

Q. Do you mean 1941?

A. We bought scrap metal, but not iron.

Q. Scrap metal? A. Yes.

Q. Who bought that?

A. Well, we would buy that; that was the daily routine of the business.

Q. Who bought that before Yomamoto left, the scrap metal? A. Metal, yes; well, we did.

Q. But occasionally he would go out and buy scrap iron on plantations or other places?

A. Yes, on big deals he would.

Q. Do you recall that Yotaro wrote to you in 1941 asking you to buy scrap metal or some sort of

(Testimony of Tokuichi Tsuda.)

metal, ship metal, for the aircraft factories in Japan?

A. Aircraft factories?

Q. Yes. A. No, I don't remember.

Q. When did Yamamoto leave for Japan?

A. He left in the early part of April, 1941.

Q. 1941? A. Yes.

Q. Do you recall in March, 1941, receiving a telegram from [363] Yotaro Fujino—March 23, with regard to the new iron for the Shinkoo Aircraft, Koogyosho, Shimura?

A. No, that is the first time I heard of it.

Q. Did you bring this telegram down to the court, you and Tsutsumi and Kaname?

A. No, I didn't bring it. Anything brought out, maybe he found that in Yamamoto's desk.

Q. You didn't know anything about that?

A. No.

Q. You got a letter later from Yotaro Fujino after Yamamoto left, didn't you?

A. Yamamoto might have gone back and talked over the things.

Q. You mean you didn't know anything about that?

A. No, I don't know anything about the aircraft.

Q. All right. Did Kaname write any of the business letters to his father after Yamamoto left?

A. I don't remember whether he wrote any business letters.

Mr. Jansen: No further cross-examination.

The Court: Redirect?

(Testimony of Tokuichi Tsuda.)

Redirect Examination

By Mr. Beebe:

Q. In all of these questions addressed to you, Mr. Jansen has used the expression "Letters addressed to you." Now do you recall ever having received a letter from Mr. Yotaro Fujino [364] addressed to you personally?

A. From Yotaro Fujino to me personally?

Q. Yes.

A. No, there wasn't any letter addressed to me personally.

Q. Now might I ask whether or not the correspondence was addressed to the corporation?

A. Any business, yes.

Q. You have been asked whether or not you received or you were able to locate the receipt, or a receipt concerning the eight thousand dollars. Now was there any corporate action taken with reference to that tax liability of Mr. Fujino's—Yotaro Fujino?

A. Yes, we had a meeting on that, I am quite sure, and that matter was discussed.

Q. And were minutes of that meeting kept?

A. It must be kept, yes.

Q. Directing your attention to page 15 of a blank book in red, the "15" being in blue, I will ask you what that book it.

A. This book here? (Indicating)

(Testimony of Tokuichi Tsuda.)

Q. Yes. A. This is a minute book.

Q. Of what? A. Of the corporation.

Q. By the corporation, you mean the Oahu Junk Company, Limited? [365]

A. That's right, yes; of the meetings that we have.

Q. I will ask you to examine page 15, and ask you if that is a true record of the minutes of the corporation held on June 2, I believe, 1945; is it?

A. 1942.

Q. 1942. Concerning the loaning of eight thousand dollars to Kaname? A. Yes.

Q. And when, if you know, were these minutes made up with reference to the day of the meeting?

A. When the minutes were made up?

Q. Yes, with reference to the time of the meeting?

A. The minutes was made up probably about two or three days after the meeting.

Q. And were they kept in the regular order of business of the corporation? A. Yes, it was.

Mr. Beebe: I would like to offer in evidence at this time, if the Court please, the minutes of this meeting, particularly page 15.

Mr. Jansen: No objection.

The Court: It may be received as Plaintiff's exhibit next in order. That will be "P."

Mr. Beebe: May I ask that we be permitted to make a copy of this and substitute it for the book?

Mr. Jansen: Surely.

(Testimony of Tokuichi Tsuda.)

(Book offered in evidence, page 15 thereof, received and marked Plaintiff's Exhibit "P," with right of substitution of a copy to be so marked.)

[Plaintiff's Exhibit "P" set out on pages 526-527.]

Mr. Beebe: Page 15. I would like to read it to your Honor, so that your Honor might have it in mind. It is headed: (in caps.) "Minutes of meeting of the Board of directors of Oahu Junk Company Limited, held at the office of the company at 1217 North (N) King street, Honolulu, T.H. on June 8, 1942, at 2:30 p.m.

"Upon notice duly given, a meeting of the Board of Directors of Oahu Junk Company, Ltd. was held at the time and place above mentioned: Present: Kaname Fujino, Tokuichi Tsuda, Yasuo Tsutsumi Mitsugi Maneki Shizue Maneki, by proxy. Absent: Tadashi Fujieki Katsue Fujieki.

"The meeting was called to order by Kaname Fujino, President. He explained the purpose of the meeting and then the matter was referred over to T. Tsuda, vice-president. T. Tsuda, then further explained that the license to transfer 10 shares of Y. Fujino's stock to the Company as recorded in the minutes of May 15, 1942 has been denied by the Foreign Funds Control. T. Tsuda stated that since the license has been denied and that the money had to be raised for Y. Fujino in order to make his 1940 additional tax payment due to the United States

(Testimony of Tokuichi Tsuda.)

Government, he suggested that the Company make an advance of [367] \$3,541.53 to Y. Fujino upon the security of savings account balance with the Yokohama Specie Bank at Honolulu, and also to make an advance to Kaname Fujino of \$8,000 upon his written agreement to apply the monthly rental of \$300 due him from the Company together with the security of savings account with the Pacific Bank in the sum of \$1,515.38 in the name of Kaname Fujino; then to have Kaname Fujino pay the \$8,000 advanced to him by the Company to his father, Y. Fujino in part payment of his indebtedness so as to enable his father to pay said taxes.

“After some discussion, Y. Tsutsumi moved that the above mentioned advances be made by the Company. The motion was seconded by M. Maneki and was unanimously carried.

“There being no further business, the meeting was duly adjourned at 3:30 p.m.

“Dated; Honolulu, T. H. June 8, 1942. (Signed) Shizue Maneki, Secretary.”

Q. Now do you recall a telegram received from Mr. Yotaro Fujino along in September of 1941 regarding a \$500 present to be made to Tsutsumi's brother upon marriage?

A. Yes, I remember that.

Q. Now was there any corporate meeting, or any discussion of any kind, between yourself, Tsutsumi and Kaname regarding that \$500?

(Testimony of Tokuichi Tsuda.)

A. Yes, Tsutsumi, Kaname and I got together on that, and [368] after discussion, due to the fact that the corporation funds was frozen, we could not very well pay it in money from the corporation, and unless we obtained a license from the Foreign Funds Control, and so we had in mind probably the Foreign Funds Control would not permit a license for the purpose in such an amount, and so I suggested that Kaname advance the money for the corporation.

Q. Oh, your funds were frozen at that time, and you knew it would be hard to ask the Foreign Funds for \$500 to make the payment, is that about it?

A. That is it, yes.

Q. Now you were questioned somewhat about the power-of-attorney received by Yotaro. I will ask you to examine the translation to Exhibit L, being the letter of January 16th 1941, and particularly to the post-script, reading: "As I have already received my power of attorney, I will immediately go to the American Consul—" and ask if that portion in any way refreshes your recollection as to the time that that power-of-attorney was sent? Apparently he had received it on January 16, 1941, because of that letter.

A. Well, I still think that the power-of-attorney to Yotaro Fujino and Chiyono Fujino must have been sent out about the same time.

Q. And that was in December, sometime in December of 1940?

A. Yes, in December. [369]

(Testimony of Tokuichi Tsuda.)

Q. Now, directing your attention to the conference or the conversation that you had with Yamamoto at the home, was all the details given by you to Mr. Jansen all discussed at one time, and at that one conference, at the home?

A. Yes, in general.

Q. But were there other conferences at other times and places?

A. Yes, there were conferences; we had occasion to go, I or Harry, or we both went with Seitaro Yamamoto to Mr. Murakami's office.

Q. Where were the details worked out, at the home, or Murakami's office, or elsewhere?

A. The details of the whole thing probably was suggested by Yotaro Fujino and the whole thing was worked out mostly at Murakami's office.

Q. At Murakami's office? A. Yes.

Q. How many conferences would you say were held altogether up to the time of the incorporation?

A. Oh, there were several; probably around about half a dozen times.

Q. Now with reference to the note taken back from Yotaro or from Kaname and his two sisters, was there ever anything said about the fear of the future, that they would squander the money? [370]

A. No, not in that sense; not squander the money.

Q. Well, you used the term, in your direct examination, of "parental control?"

A. That's right, yes.

(Testimony of Tokuichi Tsuda.)

Q. Do the terms "parental control" and "squander the funds" mean the same thing to you?

A. Well, probably they were afraid they may just spend it too freely.

Q. Well, now, which is the case? Originally you said that the old gentleman wanted to retain some parental control?

A. Yes.

Q. Where did you get that first idea?

A. Well, he had in mind probably the children were young yet, especially Kaname hasn't had any business experience at all, and he wanted Kaname to go to school and work in the store.

Q. Where did you get the idea for the expression that you used, "parental control?"

A. Well, it is just my thought.

Q. And was it just your thought when you said to Mr. Jansen you did not want him to squander the money; was that just your thought, too?

A. It may have been, yes.

Q. Well, now, what is it, please?

A. Well, squander the money,—he did not want them to [371] spend foolishly.

Q. He did not want them to spend foolishly, and squander means to spend foolishly?

A. Yes.

Q. Yes. Where did you get that idea, from anything Yamamoto said or any letter that you read, or what?

A. No, that is a general idea; my opinion.

Q. All right. Now let's go to Yamamoto and inquire a little bit. Was he a drinking man?

(Testimony of Tokuichi Tsuda.)

A. Yes, he used to drink quite a bit; not to the extent where he lose his mind, but he likes to drink off and on.

Q. Was that somewhat the reason why he was not around the office, or was it,—was it his health?

A. That is the reason.

Q. Was that a condition that existed over a long period of years?

A. Yes, since I knew him he used to be a moderate drinker but gradually as he went on for awhile he used to go on drunk,—not drunk but just continually drinking for a month.

Q. Now during the time that Kaname's father was here, what was the relationship between the two of them with reference to business?

A. Well, they were the two that always go up together on any matter that were discussed. Well, there were some business, Army and Navy business, any big activities, Mr. [372] Fujino will discuss it, or Yotaro Fujino will discuss it with Yamamoto on all these big deals.

Q. Did that relationship continue on so far as you boys were concerned?

A. Yes. Only on big deals, and things like that, and in the main that is the big items Mr. Fujino had consulted, but he seemed to have confidence in Mr. Yamamoto's opinion on the large thing.

Q. How about after Fujino went back to Japan, did that same relationship continue on between yourself and Tsutsumi and Yamamoto?

A. I don't quite get you on that point.

(Testimony of Tokuichi Tsuda.)

Q. Well, let's put it this way: After Fujino left for Japan—— A. Yes.

Q. Did you and Tsutsumi rely on Yamamoto in the big deals and so forth and so on?

A. Oh, yes, we did.

Q. And you continued along the same as the old man did? A. Yes, that's right, yes.

Q. Well, now, why did you do that, rely on Yamamoto, on these big deals?

A. Well, it seems to me that while Mr. Yotaro Fujino left for Japan he told Tsutsumi and I that we were still didn't have the experience that Yamamoto had, and he told me [373] at the time that he knew Yamamoto way back some time in 1915 when he started the business, and when Yamamoto was down at the Waimanalo Plantation, and Fujino used to go there quite often and seen him there, and he had been known,—those two had known each other since about 1915, and in all the dealings that Yamamoto had suggested things came out fairly to his judgment, so Fujino on that ground, Fujino thought his confidence in Yamamoto in the business.

Q. Now at the time those first powers-of-attorney were drawn, do you know of any reason why the three of you were not named, rather than the two,—just the two of you?

A. Well, probably the only reason that I can give is he drinks a little too much, is about all I know.

Q. Well, now with reference to correspondence between the old man, Fujino and Yamamoto, was

(Testimony of Tokuichi Tsuda.)

all of that correspondence so far as you know kept in the office, or was some kept in the office and some taken elsewhere by Yamamoto?

A. Well, we haven't given very much attention to those letters, but to the best of my knowledge the letters, most of them, were kept by Seitaro Yamamoto.

Q. What do you mean "kept by him?"

A. At his home.

Q. At his home? A. Yes.

Q. Have you gone to Yamamoto's home to ascertain whether [374] or not there was any correspondence at his home?

A. No, I never did, but I understood from Kaname that he did go.

Mr. Beebe: I think that is all.

Recross-Examination

By Mr. Jansen:

Q. There wasn't any doubt at all times that Yotaro wanted to exercise parental control over these children, and that is why he took these notes back, was there? A. Yes.

Q. You knew that to be a fact?

A. Yes, that's right.

Q. And you also knew it to be a fact that he did not want them to squander the money?

A. Yes, that's right.

Mr. Jansen: No further questions.

Mr. Beebe: That is all.

The Court: You are excused.

(Witness excused.)

The Court: We will take a recess.

(Recess.)

(Following the recess the Court convened and all parties were present as before, whereupon the following further proceedings were had and testimony taken.) [375]

ROBERT K. MURAKAMI

recalled as a witness for the plaintiff, having been heretofore duly sworn, testified as follows:

Direct Examination

By Mr. Beebe:

Q. You have already been sworn, Mr. Murakami? A. Yes.

Q. You have heard the testimony with regard to the obligation of five thousand dollars to you by the Oahu Junk Company, Limited, at the time of its incorporation. A. Yes.

Q. Will you tell us, Mr. Murakami, whether or not prior to the incorporation Mr. Fujino was indebted to you in the amount of five thousand dollars? A. He was.

Q. And will you tell us the circumstances under which that obligation arose?

(Testimony of Robert K. Murakami.)

A. That is a pure and simple loan to Mr. Fujino in his business. In other words, I gave,—I don't recall whether or not it was in a check or not, but as I remember I drew some money out from the Pacific Bank and, I don't know,—right over the counter, I guess, and down at the Pacific Bank I did make the loan, and I think it was Mr. Yamamoto who came down and took the money. I think it was a cashier's check, if I am not mistaken, taken out of my savings account. [376]

Q. And when you said "Mr. Fujino" you meant Mr. Yotaro Fujino?

A. Yes, Yotaro Fujino, who is represented here by his attorneys-in-fact, and Mr. Yamamoto acting for them came to me, to my office, and got the loan from me.

Q. And it was a loan of five thousand dollars; not an obligation arising because of professional services rendered, is that correct?

A. No, it is a plain personal loan. It was not for any lawyer's fee or anything of the kind.

Q. And do you remember approximately the year in which that money was loaned?

A. I don't remember, except it was 1938 or 1939, somewhere around there; I may have the note. I may have the note. (Looks at papers.) Well, I don't think I have the note, but I may have a record of it in my office.

Q. Well, during the next hour will you look up and give us the exact date upon which that loan was made?

A. Yes, I will do that.

(Testimony of Robert K. Murakami.)

Q. Now you visited Mr. Yotaro Fujino in Japan and stayed at his home?

A. Yes; I stayed at his home, too.

Q. Will you tell the Court what type of home it was, and what type of piece of property it was, and so on?

A. I cannot give you a too good description of it, but a [377] nice home, a big home. I remember it was two-story, and in a very nice part of Tokio, and it looked like a very impressive mansion.

Q. Approximately how many rooms were there, upstairs and downstairs?

A. Well, Japanese houses have so many rooms that I would not be able to give an estimate. It certainly was not two or three; it had ten, maybe, or maybe more.

Q. What type of construction?

A. I think it was a brick roof; what we would call a combination Oriental and Occidental,—a mixed type of residence, in a rather exclusive, I would say, residential district.

Q. About how large was the piece of property upon which his home was situated?

A. It looked,—all those homes around there, were about the same size; they looked pretty big; maybe about 100 or 200 or something like that; I would not be able to describe very much about it.

Q. I am talking about the land.

A. Yes, the land, I would say, was 100 feet by 200 feet, maybe.

Q. Any servants about the home?

(Testimony of Robert K. Murakami.)

A. I think there was.

Q. Do you remember how many?

A. One or more than one; one or two; two I think. Of course [378] I would not know whether they came, you know, merely because we were guests there for a few days, or not; I don't know. I would not say whether they were permanent servants or not. I would not know.

Q. During the time you were there you were under the impression that there were either one or two? A. Yes, one or two. I think two.

Mr. Beebe: I think that is all. We will get the date when the loan was made.

Cross-Examination

By Mr. Jansen:

Q. How are you going to check the date that the loan was made?

A. I will look at my own record.

Q. Do you think you may have the note, too?

A. I don't know about the note. I don't think so. That has been paid off already.

Q. What kind of record?

A. My own personal record. I have files. I have for income tax purposes and so forth. I have my files. I am pretty sure I have a record, so I think I can find out the dates and so forth.

Q. Will you bring the records with you?

A. Yes, and I will bring the record if I have it.

Q. It was in 1940 that you visited Yotaro Fujino's home [379] in Tokio?

A. Yes, that's right.

(Testimony of Robert K. Murakami.)

Q. Do you know how long he had owned that home?

A. From information gathered from him, a few years before that he had bought it.

Mr. Jansen: No further questions.

Mr. Beebe: There is one further question that I should perhaps have asked correctly on direct, and I will ask permission to reopen.

Mr. Jansen: No objection.

Direct Examination
(Resumed)

By Mr. Beebe:

Q. At the time these last powers-of-attorney were prepared and sent to the Fujinos in Japan, can you tell us why a deed was not sent for execution by the Fujinos rather than powers-of-attorney and later deeds by the attorneys-in-fact, Mr. Murakami? A. Well——

Q. If there was a reason.

A. Yes, I think there was a reason. Mr. Fujino had several pieces of property; that is, several pieces, some contiguous, some separated, and as I said before, I think one or two pieces of property were held in his name as "Yootaro" Fujino, and the others were held in his regular name; that is "Yotaro," and also I didn't have at the time the description of all [380] the properties handy with me. Some of the properties, as I said before, were under mortgage to the Bishop Bank, and it was a

(Testimony of Robert K. Murakami.)

matter of the bank, to the extent, as I thought at that time, of the indebtedness of Mr. Yotaro Fujino to the bank, to have a real property mortgage on his property before the completion of the incorporation and the transfer of the real property to Kaname.

And then further, as I recall, the power-of-attorney which had been drawn for Chiyono Fujino to Tsuda and Tsutsumi recited the fact that she was doing business as Oahu Junk Company, which I knew to be not a statement of fact, and I am not so sure about it, but I think there was some doubt as to whether or not the right of release of dower was in the general power-of-attorney from Chiyono, and as I explained before, the—well, in making,—the mechanics in preparing the deed, it looked very inconsistent or at least very awkward to have to refer to two powers-of-attorney of Yotaro Fujino. Of course we might have made two separate deeds covering that, but having in mind the other question of getting Mrs. Fujino's power-of-attorney back to her, and so forth, my suggestion was, and they decided, well we might as well get the new power-of-attorney and get everything all straightened out.

Q. Well, now, was there anything about the bank obligation that caused the powers-of-attorney to be drawn rather [381] than a deed direct from the Fujinos, Kaname's father and mother, rather than powers-of-attorney?

(Testimony of Robert K. Murakami.)

A. Well, as I said, we had to make the mortgage, and the bank mortgage would be the same, in drawing the mortgage we would also have to refer to two powers-of-attorney. That was the understanding, and all agreed that that mortgage would come first, and the transfer would be subject to the mortgage. That is, the transfer to Kaname was to be subject to the mortgage, and we were to send the deed over. We certainly could not let him sign the deed first without the mortgage being executed, and taking into consideration everything we thought it was best to have the powers-of-attorney sent down and sent back here, and then have the mortgage executed, and then make the transfer of the land subject to the mortgage.

Mr. Beebe: I think that is all.

Cross-Examination

By Mr. Jansen:

Q. Were the powers for Chiyono, Kaname and Yotaro all prepared at the same time?

A. My recollection is, I tried to look in my files,—but my recollection is the one for Kaname was prepared first. That is, I mean in my office, because we had the proposition of letting the attorneys-in-fact here sign the notes for the shares, because Kaname was not here, so I remember rushing [382] that first, and then turning it over to the Oahu Junk Company, either Mr. Tsutsumi or Mr. Yamamoto, I don't know who,—to have it sent immediately.

(Testimony of Robert K. Murakami.)

Q. You thought the most important thing was to get the obligation from Kaname on the shares fixed up first?

A. No, I would not say that. You see, we wanted to make,—and as I explained first, the corporation was incorporated with a thousand dollar capital, and then we had to make the transfer of the entire assets from Mr. Yotaro Fujino to the corporation, and part of the consideration for the transfer was the issues of the shares.

Q. Were Chiyono and Yotaro's powers prepared at the same time?

A. That is right following that, around there.

Q. Well, were they prepared at approximately the same time?

A. Approximately, as I recall, completed,—the one for Kaname first, and then started with Chiyono, and as I recall the other one was prepared by the bank.

Q. You did not wait for the powers-of-attorney to organize the corporation——

A. No, we did not.

Q. From Yotaro and Chiyono? A. No.

Q. And you did not wait for the powers-of-attorney to [383] transfer the assets of the Oahu Junk Company to the corporation? A. No.

Q. That was all done before new powers had been prepared for Chiyono and Yotaro?

A. I think just about the same time, because, as I said, it was more because of the land, that we realized more fully that it would be better to get a new power-of-attorney.

(Testimony of Robert K. Murakami.)

Q. In other words, the corporation was organized and the stock was issued and Kaname's power-of-attorney had been executed, and returned, and his note for the stock was signed, all before the new powers-of-attorney were prepared for Chiyono and Yotaro in connection with the transfer of the land?

A. I would not make a definite statement that it was all before. That preparation of the new power-of-attorney,—because all of that was all about the same time, and I know that the transfer of the business assets, exclusive of the land, was made somewhere in the first part of December, and on or about or about that time it was that I was preparing the power-of-attorney for Chiyono Fujino, so I don't know whether it came first or not.

Q. The corporation was organized in November?

A. November 27, if I am not mistaken.

Q. And the plan of incorporation and the issuance of the [384] stock was carried out directly after that? A. Shortly after that, yes.

Q. And Kaname's power had been sent on its way so his attorneys-in-fact would have authority to execute the note for him?

A. That's right.

Q. And after all that was done the new powers were sent to Yotaro and Chiyono for the transfer of the land?

A. Yes, as far as the sending, it must have been somewhere around the first or middle part of December. As to the preparation, I would not be sure it

(Testimony of Robert K. Murakami.)

was done right after. It was more or less one action.

Q. At the time of the transfer of the assets of Yotaro Fujino as an individual to the Oahu Junk Company, Kaname was not the owner of the land?

A. At that time Kaname was not the owner of the land, no.

Q. And did not become the record owner of the land until May, 1941, is that right?

A. That is correct, yes.

Q. By deed executed in March, 1941?

A. Yes, that is correct.

Q. What arrangements were made at the time the corporation was organized and the bill-of-sale was given to the corporation for rental of the land?

A. That I have no—I did not get into that phase of it with the company or with Mr. Yotaro Fujino's attorneys-in-fact.

Q. You had nothing to do with that?

A. As I recall, I did not,—I was not consulted about that, particularly, anyway; that is my recollection.

Q. As far as the records of the corporation are concerned they show nothing with regard to the land that they were to occupy until after that,—or until late in 1941, do they?

A. Yes, as far as I have examined the record I do not think it shows anything about the occupancy of the land, except, you might say, the fact that it is recited that the office of the corporation was going to be right there at 1217, the same address there.

(Testimony of Robert K. Murakami.)

Q. But then aside from the fact that the office was going to be at the same address, was to be established at that address, no arrangements whatsoever were made for the land, for the occupancy of the land, for the rental of the land, or anything of that nature, until late, or at least in the middle of 1941?

A. As far as I know, whatever arrangement, or what the understanding they had, I know they probably took it for granted, but I had nothing particularly to do with that, and I have no definite recollection of any transaction along that line. [386]

Q. Didn't you, as an attorney, feel called upon to ask why the land would not be transferred to the corporation?

A. We discussed the entire thing, and I would not say I called their attention to why it was not transferred. As I explained to you the last time, I think Mr. Fujino had expressed the desire to me when I was talking to him in Japan, discussing the entire matter with him in Japan, so that fact came in the discussion here, when the corporation was to be formed. I did not say that, well, you should put it in the corporation.

Q. In view of the fact that you had some information on that land, that it was to be transferred to Kaname, didn't you consider it your responsibility, as counsel, to call their attention to the fact that it had no place to do business, and unless arrangements were made they would not have any place to do business?

(Testimony of Robert K. Murakami.)

A. I may have been remiss in my duties, but I didn't think of it in that light, figuring that Kaname was going to be one of the substantial stockholders.

Q. In other words, you inferred they would go right on and they would continue to operate there on the same land, regardless of who owned the land?

A. More or less in that sense.

Q. In fact, there wasn't any doubt about it in anybody's mind? [387]

A. I don't think there was any doubt as to where the place of business was going to be. I don't think anybody thought the corporation would be kicked out from the premises.

Q. You were quite confident that there was not going to be any change in that; that is why it was not necessary to bring it up?

A. Well, I just didn't.

Q. Let me ask one more question there. Besides the land that Yotaro Fujino conveyed by this deed of March, 1941, did he own any other real estate in the Territory of Hawaii that you know of?

A. You are referring to the deed of March, 1941?

Q. Yes. A. I think that was all.

Q. In other words, the property referred to in this deed, Plaintiff's Exhibit H, was all of Yotaro Fujino's property in the Territory,—that is, all of his real property?

A. As far as I knew, and as I gathered from all the conversations, and with the attorneys-in-fact,—Mr. Yamamoto, this constituted the entire real estate holding of Mr. Fujino here.

(Testimony of Robert K. Murakami.)

Q. Did he at any time between the time you saw him in Japan in 1940, and the time this deed was executed, transfer any other real estate to his other children,—the two daughters? [388]

A. As to that, I do not have any recollection, definite, but I remember some such transaction as to a building, the father calling for a building to be built for one of the daughters, or something along that line. Now I may be mistaken.

Q. Did he own any other real estate in 1940 that you know of besides that described in that deed, Exhibit H?

A. I don't know—I do not have any recollection of that.

Q. Your best recollection is that that was all of his property?

A. Yes, at the time this conveyance was made, around the first part of 1941, March, my recollection is that that was all.

Q. All of his real estate?

Q. All of his real estate.

Q. And from 1940, when you were in Japan, until that time in March, you don't know of any other real estate that he may have owned, and may have transferred to one of his daughters?

A. That is where I am not sure. It may be that the daughters or one of his sons-in-law may have bought some land or made an agreement to buy some land, and the old gentleman helped some and built the house or something like that. I have faintly in my recollection some such deal as that now; that

(Testimony of Robert K. Murakami.)

they were handling lumber, and there was something about building a house or helping to build a house, [389] something like that.

Q. He may have helped one of the daughters build a house? A. Yes.

Q. But aside from that, you know of no real estate that was conveyed to any of the two daughters between the date you were in Japan in 1940, and the time this deed was executed in 1941?

A. I don't have any recollection of such a conveyance by him to his daughter.

Q. And if there had been one, they would undoubtedly have come to you to prepare the papers, wouldn't they?

A. Well, I hope so; I don't know. Maybe they would have gone to somebody else.

Q. What I am trying to get at, Mr. Murakami—
and I think you understand, too——

A. I understand.

Q. Is that in 1940 Yotaro Fujino owned the land referred to in Exhibit H and no other, and that when he conveyed the land to Kaname he was conveying all his real estate holdings in Hawaii?

A. Yes, that is my understanding; all of his real property in the Territory he was conveying to his son.

Q. And when you talked to him in Japan he spoke of conveying all his real estate to Kaname, and none to the two daughters? [390]

A. No, he did not speak of conveying any land to his two daughters.

Mr. Jansen: I think I have it cleared up now.

(Testimony of Robert K. Murakami.)

Redirect Examination

By Mr. Beebe:

Q. When you have a son, it would be rather unusual for a Japanese, Mr. Murakami——

A. I don't catch that.

Q. To convey land to a daughter, when he had a son, would be rather unusual in Japan, wouldn't it?

A. Very unusual as far as old-time Japanese are concerned.

Mr. Beebe: I think that is all, Mr. Murakami.

Recross-Examination

By Mr. Jansen:

Q. Do you mean they disinherit the daughters, as a rule?

A. Yes, you marry out and you don't get anything. If the old man makes a will he leaves it to the son and leaves out the daughters.

Q. You mean under the law of Japan?

A. No, the mental—the way they take it, the family tradition; the woman goes out of the home.

Q. Was that the reason he had this stock issued to the daughters, to distinguish between land and stock? [391]

A. Sometimes they do.

Q. Sometimes? A. Yes.

Q. Do you think there was a distinction made in this case?

(Testimony of Robert K. Murakami.)

A. I think so. I think he had considered all angles—which I would tell you—I ordinarily tell them, “Why don’t you give something to the girls, too,” and in this particular case I am sure that that thing came because of my suggestion when I was talking to him in Japan.

Q. You mean he issued the certificates of stock to the girls and took the notes back?

A. No, I mean, giving the shares to the girls too, to some extent.

Q. Was not Mr. Fujino a more modern person, having lived in the Territory all his life, or most of his life?

A. Yes, some, I would say. He had acquired some of the notions about inheritance and giving property and so forth, yes.

Q. Do you think the fact that Kaname was single and would not need a wife to sign a deed, if there was to be one—might have had something to do with it, whereas the daughters would have to have their husband’s sign?—

A. No, I don’t think so.

Q. If they had received the real estate?

A. I don’t think so. [392]

Mr. Beebe: The daughters would not have had to have their husband’s sign: not in our Territory.

Mr. Jansen: Doesn’t the husband have some right of dower the same as the wife?

A. No, I think the statute reads that the husband has a courtesy right only when he dies.—

Q. When she survives? If the husband survives the wife, his right of courtesy would also survive?

A. Yes

(Testimony of Robert K. Murakami.)

Q. And if the——

A. If he makes a conveyance during the time, under our law; that is the way we interpret it.

Q. So that you don't think that matter entered into it?

A. No, I don't think Mr. Fujino had any such ideas.

Q. He just did not want to give any of the land to his daughters? A. I am sure about that.

Mr. Jansen: I think that is all.

Mr. Beebe: That is all.

(Witness excused.)

The Court: We will stand adjourned until 1:30 o'clock p.m.

(Whereupon adjournment was taken until 1:30 p.m., November 7, 1946.) [393]

Honolulu, T. H., Thursday, November 7, 1946
1:30 o'Clock P.M.

The within-entitled matter came duly on for further hearing on Thursday, November 7, 1946. at 1:30 o'clock p.m., all parties being present as before, whereupon the further following proceedings were had and done and testimony taken:

(Off-the-record discussion between Court and counsel with regard to the calling of certain witnesses.)

The Court: Are you parties ready?

Mr. Beebe: Ready.

Mr. Jansen: We are ready. May it please the Court, I had intended to introduce these as exhibits, but we had not decided completely on the translations or agreed upon them at the time. I have shown them to Mr. Beebe. Do you agree that they are substantially correct? We have one other letter that we are in the process of translating now, and that will come in later. I will offer these.

The Court: Any objection?

Mr. Beebe: No objection, if your Honor please.

The Court: Very well. They may become the Government's exhibits next in order.

Mr. Jansen: May I suggest the original Japanese be given a number, and the translation have the same number with an "A" after it, and so on.

The Court: Yes. They will be marked 7 and 7-A, and 8 and 8-A. Which is 7?

[Defendant's Exhibits 7-A and 8-A set out on pages 357-458.]

Mr. Jansen: 7 is the letter from Fujino in Japan to the Oahu Junk Company, and 8 is the cablegram.

The Court: The cablegram is between the same parties?

Mr. Jansen: Between Yotaro and the Oahu Junk Company; to the Oahu Junk Company. It is presumably from Fujino. I don't think it has any signature. From Fujino, Japan, Tokio, to the Oahu Junk Company, and the date is March 23, 1941, and it is marked in pencil "Received March 24, 1941, at 8 o'clock in the morning." "8 a.m."

The Court: Let me review that. What is the gist of the letter, and I am trying to find out where you refer to it.

Mr. Jansen: The letter refers to the monthly report, and it reads: "I am glad to know that everybody is well. Fortunately we are all well so please feel at ease. I read with thanks the financial report and others up to December 31st of last year, recently sent to me, of my private enterprise which was later incorporated. You may be busy but will you please let me know as in the past years the monthly business condition each month to the necessary extent on the formerly printed form. Please excuse my haste writing. In closing I pray good health of you all."

The Court: And the cablegram is what?

Mr. Jansen: The cablegram, may it please the Court, is [395] with reference to the aircraft metal, for the aircraft company, and the cablegram reads: "The last user of the new iron was Sinko Aircraft Kogyosha 291 Azukizawa, Shimura, Itabashike, usage it for repairing of factory warehouse."

I might say, if it please the Court, we also have a letter that refers to the last item; that is, the new metal for aircraft factor, that they are in the process of translating now.

The Court: They are two different things?

Mr. Jansen: Yes. This is the cablegram.

The Court: Where is that radiogram that you asked the witness if he sent in reply to the request to make the plaintiff president of the corporation?

Mr. Jansen: Oh, he admitted, if it please the court, that in October he sent a cablegram in which he said Kaname has been elected president, please fill out deed, but we could not quite agree whether they had sent the stock certificate; it was his recollection that the cablegram also said "Received your stock certificate" too; they say that they had sent it.

The Court: You are not offering that in evidence?

Mr. Jansen: No.

The Court: As long as we are cleaning up details, how about Mr. Murakami?—

Mr. Beebe: I was going to recall Mr. Murakami to explain that telegram, and I have the note. [396]

ROBERT K. MURAKAMI

recalled as a witness for the plaintiff, having heretofore been duly sworn, testified as follows:

Direct Examination

By Mr. Beebe:

Q. Mr. Murakami, during the noon-hour did you endeavor to ascertain the date upon which you made the loan to Yotaro Fujino?

A. Yes, I did.

Q. Did you secure the original note marked "paid" and so forth? A. That's right.

Q. Where did you obtain that?

A. This came from the Oahu Junk Company. I tried my files, but only had a few minutes after lunch, but I could not find anything. I believe I

(Testimony of Robert K. Murakami.)

have a record of it. This is the original note. (Indicating)

Q. The loan was made on what date?

A. July 1st, 1938.

Q. The amount?

A. Five thousand dollars.

Q. When was that obligation paid off?

A. February the 11th 1942; in my own handwriting.

Q. And was that paid in a lump sum or paid from period to period? [397]

A. Lump sum payments.

Q. Mr. Murakami, there has just been introduced in evidence a telegram dated,—well, it has stamped on it 41, March 23, p.m. 11/34, the translation being: "The last user of the new iron was Sinko Aircraft" etc. Now will you tell the Court the conditions that existed at that time, and the reason, if you know, for this wire?

A. This telegram,—My recollection is—

The Court: May I interrupt, first. Could he tell us what is meant. I do not understand.

Mr. Beebe: This will explain it, if your Honor please.

A. As I recall, the whole transaction, at that time,—that is, about March of 1941, shipments of commodities such as scrap steel, iron and so forth, to Japan, had to be made only pursuant to an export license issued by the Department of State, if I am not mistaken, in the United States Department of State here, and the Oahu Junk Company,

(Testimony of Robert K. Murakami.)

Limited, asked me and in turn I asked our corresponding lawyer in Washington, Mr. Henry F. Butler, to attend to that matter of filing an application for a license, an export license, and in the course of the communication between Mr. Butler's office and my office, which always related to the Oahu Junk Company, Limited, we had to get the name of the ultimate consumer of scrap or iron which was sent to Japan, and also the address, and for what purpose that material was to be used, and that [398] information had to be included in the application to the State Department for an export license. We had received a wire from Mr. Butler in Washington,—I have the original of that radiogram here, which says "Must know ultimate consumer and purpose for which proposed shipment required before making a license application."

Q. Now the date of that telegram is what?

A. It looks like March 2; it may be March 21,—and I rather think it is March 21, 1941; 7:04 a.m. I think it is also "21" because the previous communication about this is March 11, from us to Mr. Butler's office, and then I recall discussing the matter with Mr. Yamamoto and perhaps Mr. Tsuda,—I don't know whether both came; I know Mr. Yamamoto did come, and we formulated the wire to be sent to Japan for this information, and I believe this was the answer that we got, because on the 24th of March 1941 we in turn relayed that information to Mr. Butler. We addressed to him—Ultimate consumer of bars and flat iron Shinko

(Testimony of Robert K. Murakami.)

Aircraft, Kogyosha 291, Shimura, Azukizawa, Itabashi-ke, Tokio, for repairing shop warehouse. Murakami." That was addressed to Mr. Butler. That is the code address in Washington, D. C. So that is the way, I recall, that whole transaction.

Q. So the two wires that you have just referred to are connected with Defendant's Exhibit 8 in the fashion that you have just described or indicated? [399] A. That's right.

Q. Will you remove those from your files so we can introduce them?

A. This is the first one, and this is the second one. (Producing documents.)

Mr. Beebe: I will ask, if your Honor please, that the telegram from Butler first referred to, the same being dated March the 21st, be received in evidence and given the first number, and the telegram from Murakami to Reltub,—Butler spelled backwards, I guess, be received in evidence and marked with the next subsequent letters.

The Court: Yes. The first would be "Q" and the next one "R."

(Radiograms referred to are received in evidence and marked: Plaintiff's Exhibit "Q" and Plaintiff's Exhibit "R," respectively.)

[Plaintiff's Exhibits Q and R set out on pages 527-528.]

Q. I note, Mr. Murakami, that Plaintiff's Exhibit "Q" is addressed "Benkumi." What is that?

A. That used to be our short-cut address, registered with the local telegraph office.

(Testimony of Robert K. Murakami.)

Q. By "our," you mean the firm?

A. I mean the firm of Murakami and Marumoto.

Q. And with reference to Plaintiff's Exhibit "R" the address is "Reltub, Washington, D. C." What does that mean?

A. Reltub, Washington, D. C., is the registered code address [400] of Mr. Butler's firm, or I think he was an individual—I don't know now. It is "Butler" spelled backwards, and that is his cable address.

Mr. Beebe: That is all.

Cross-Examination

By Mr. Jansen:

Q. Did you have a lot of such transactions during 1941?

A. Not too many, but I believe that transaction there was the only one, or two or three license applications, that I remember.

Q. Was the license in that case granted?

A. As I recall I think here the license was denied. I have this advice from Mr. Butler.

Q. Who handled those matters after Mr. Yamamoto left?

A. I don't believe we have any further applications after that to attend to.

Q. Does your file indicate whether you have any or not?

A. I think it indicated that same transaction we are talking about, and then after that there is none.

(Testimony of Robert K. Murakami.)

Q. There were none? A. None.

Q. What about other business matters for which they would need a lawyer, who came to see you after Mr. Yamamoto left?

A. Mr. Tsuda, Mr. Tsutsumi, both sometimes; one at a time at times. [401]

Q. After Yamamoto left did they consult with you about letters that they had received from Japan?

A. I have a recollection about wires more than letters, after that, if I recall. I don't think there were so many letters after that.

Q. You saw the letters that Kaname had brought down from Yamamoto's desk? A. Yes.

Q. You recall that there were more than a dozen letters, after Yamamoto left?

A. I don't recollect that, whether there are more than a dozen.

Q. I think so.

A. As a matter of fact, I didn't notice the date. I think it was all during the period—I didn't even notice that there were more than a dozen after Yamamoto left.

Q. As a matter of fact, most of the correspondence that Kaname produced was correspondence that accumulated after Yamamoto left?

A. If you will let me see that.

Q. They are working on that now. We are not through.

(Testimony of Robert K. Murakami.)

In connection with this courtesy for the property we were discussing before lunch. If a wife owns real estate and she dies without leaving a will, the real estate passes to her husband under the law of Hawaii, doesn't it? [402]

A. No, it passes to her heirs.

Q. Well, suppose she has no children?

A. No children? My recollection is that it goes one-half to the wife and one-half to the parents.

Q. If she has children?

A. It goes to the children, subject to the courtesy.

Q. The courtesy interest of the husband is how much?

A. A life estate; one-third; a life estate. Let's see, now?

Q. Is it a life estate in the home, and one-third of the rest?

A. No, I don't think the husband has that so-called right to the homestead.

Q. What is it, a life estate or a third?

A. For instance, if it is income property, as I recall it is one-third income for life, so it will be—it is only a life estate, that I know, and that this is really one-third of the net.

Q. And upon his death who does it go to—upon the husband's death?

A. Then it goes to the children.

Q. If the husband survives the wife; in every case he has a courtesy right in the wife's real estate?

(Testimony of Robert K. Murakami.)

A. Yes, that's right, but what I am trying to tell you, if there was a conveyance without the husband joining, during [403] the lifetime——

Q. Yes, I understand that, during the lifetime. I wanted to know what the situation would be if the wife would die and should be seized of this property.

The Court: That is all pre-community property law?

Witness: Yes, that is all before the community property law came in.

Q. That community property law is of recent origin?

A. That became effective in July, 1945.

Q. So that the other law would apply?

A. Yes.

Q. And this note, signed Yotaro Fujino, is dated July 31, 1938—signed by the two attorneys-in-fact?

A. Yes.

Q. It had one year after date? A. Yes.

Q. Was it ever renewed?

A. No, not in the sense that a new note was made. I just let it ride.

Q. You just let it ride?

A. Yes. In other words, I think they asked me whether I wanted the money, and I said it is all right so long as you pay me, I don't have particular need for it, and I was willing to let it ride.

Q. Did they pay interest regularly? [404]

A. Regularly, they do.

(Testimony of Robert K. Murakami.)

Q. You did not endorse the interest payments on the notes? A. No, I did not.

Q. Don't you make it a practice of doing it, or don't you loan much money?

A. No, I don't loan much money. I will when we have clients behind with money or interest——

Q. You didn't do it in this case?

A. No, I knew they paid the interest right on the dot, or a few days ahead, and there was no delinquent interest, and I didn't make the notation.

Q. Wouldn't it be good business to endorse interest payments on that note, in case something happened to you? A. I believe so.

Q. You didn't do it? A. No.

Q. You found this note among the papers of the Oahu Junk Company?

A. No, Mr. Tsutsumi, I told him to check up. We had about five minutes, and I didn't have a chance to go over my files very thoroughly; I just brought this down, and all the rest I had were here, and I haven't had a chance to go over them.

Q. This note was not in your possession; it was in the possession of the Oahu Junk Company, was it not? A. Yes, that is correct, it was. [405]

Mr. Jansen: No further questions.

Mr. Beebe: That is all.

(Witness excused.)

Mr. Beebe: I understand Mr. Jansen is willing to admit that Mr. Edmondson of our office, Mr. Harry Edmondson of our office, if he were called would testify that we are and were during the year 1940 attorneys for the Bishop National Bank of Hawaii at Honolulu, and that he as attorney for the bank prepared Exhibit "E," being the power-of-attorney from Yotaro to Tokuichi Tsuda and Yasuo Tsutsumi which was executed in Japan on the 20th day of February, 1941—on December the 16th 1940. And that also he, as attorney for the Bank, prepared Exhibit "G," which is the mortgage of the 13th day of March, 1941, on December the 5th 1940.

Mr. Jansen: There is one other question I was going to ask you in connection with that, that question being this: Is it customary for your office, when a person makes an examination and requests an opinion regarding the transaction, the title and so on, and then to prepare the necessary documents for the bank? I mean, is the examination made first?

Mr. Beebe: I should say that that is customary. Now I didn't ask about this particular thing, but the custom in our office universally is that if the bank is to make a loan on a piece of property we would obtain or have given us the search of title made by some abstractor or abstract company, and we [406] go over that search of title. We have, as you perhaps know, no system such as you have on the mainland of abstract conveyance or anything of that kind.

Mr. Jansen: But you do arrive at an opinion regarding the transaction, and do you give written opinions to your client, like a bank, or estate, and say that the title was in a state of so and so and subject to so and so?

Mr. Beebe: That is not universal practice. In some instances we do, particularly if we find a defect in the title; otherwise if the title, according to the certificate that we get from the abstractor, shows title in the mortgagor, why we just draw it up.

Mr. Jansen: When you are satisfied that good title is in the mortgagor you prepare the mortgage and you submit it to the bank, but you make an examination first?

Mr. Beebe: That's right, when it is an original loan. Now with reference to this particular thing, I cannot answer that because there was an obligation that was already in existence, and this is a mortgage to secure an existing obligation, but I will try to ascertain from Mr. Edmondson what was done, or bring him up here.

Mr. Jansen: I would like to know that one thing. It won't be necessary to bring him up here, if you will be in position to say that he will testify that he made the examination first, and after he made the examination and was satisfied [407] with the title he prepared this mortgage, or whatever he says he did.

Mr. Beebe: Yes, I will do that.

I might say to your Honor that I am not going to accumulate testimony through Mr. Tsutsumi; I am just going to put him on the witness stand for a brief examination

HARRY YASUO TSUTSUMI

was called as a witness for the plaintiff herein, and being first duly sworn, testified as follows:

Examination

By the Court:

Q. Will you state your full name.

A. Harry Yasuo Tsutsumi.

Q. How do you spell that name?

A. T-s-u-t-s-u-m-i. (Spelling)

Q. How old are you? A. Thirty-seven.

Q. You reside herein Honolulu? A. Yes.

Q. And what is your occupation?

A. Assistant manager of Oahu Junk Company.

Q. Are you a citizen of the United States?

A. Yes.

Q. Exclusively? A. I consider exclusive.

Q. Well, are you? You either are or you are not.

You consider yourself exclusively a citizen of the United States. [408] Is there some other tie?

A. I have a dual, I think; I am not sure.

Q. You think you are a dual citizen?

A. Yes.

Q. You are not sure? A. Yes.

The Court: You may take the witness.

Direct Examination

By Mr. Beebe:

Q. Where were you born?

A. Wahiawa, Oahu, T. H.

Q. When? A. May 24, 1909.

(Testimony of Harry Yasuo Tsutsumi.)

Q. You said you were not sure whether you were a dual citizen or not? Do you mean by that you do not know whether your father registered your birth in Japan? A. No, I do not know.

Q. You do not know? A. No.

Q. If your father registered your birth in Japan that would make you a dual citizen, would it?

A. Yes.

Q. Is that your understanding of it?

A. That's right.

Q. So far as you are concerned, you do not know? [409] A. Yes.

Q. Have you ever been to Japan?

A. No, I have not.

Q. So you don't know anything about the family records there in your prefecture, is that correct?

A. No, I do not.

Q. And you are employed by the Oahu Junk Company? A. Yes.

Q. And have been employed by the Oahu Junk Company for how long?

A. Well, since August 13, 1928.

Q. August the 13th 1928? A. Yes.

Q. At that time what was the status of the Oahu Junk Company? That is, was it a corporation, copartnership, or what was it?

A. No, it was an individually owned—by Mr. Fujino, doing business under the name of Oahu Junk Company.

Q. And when you say Mr. Fujino, whom do you mean? A. Yotaro Fujino.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Then you have been constantly employed since that time by the Oahu Junk Company, either when it was operated by Yotaro Fujino in his individual capacity or since it has been a corporation, is that correct? A. Yes. [410]

Q. And you, of course, knew Yotaro Fujino?

A. Yes, I do.

Q. Did you know Chiyono Fujino?

A. Yes.

Q. And do you know Seitaro Yamamoto?

A. Yes, I do.

Q. Yamamoto, when did you first become acquainted with Yamamoto?

A. When I first was employed at the Oahu Junk Company; that was August, 1928.

Q. Was Yamamoto then employed?

A. Yes, he was there ahead of me when I went to work for the company.

Q. Now tell the Court what the relationship was between Yamamoto and Fujino. By that I do not mean blood relationship—business relationship and so forth and so on.

A. Well, Mr. Yamamoto as I can recall, he was an advisor in business, and I am sure it was also in personal affairs to Mr. Fujino.

Q. How long did that continue?

A. Up to his death in 1941.

Q. Now, Mr. Fujino and Mrs. Fujino went to Japan, did they not?

A. Yes. That was in February, 1935.

Q. February of 1935? A. Yes. [411]

(Testimony of Harry Yasuo Tsutsumi.)

Q. And after they went to Japan what was the relationship that Yamamoto maintained towards the business?

A. Well, he was still the advisor to Mr. Yotaro Fujino, as well as Mr. Tsuda and I as his power-of-attorney; he was advisor to us, also.

Q. Did he continue in that capacity up to his death?

A. Yes, that's right.

Q. When Yamamoto went to Japan what were his intentions as to remaining in Japan or returning to Hawaii?

A. No, he took a trip for business, and he was supposed to be back within a short time, about six months, I think the length of time he was supposed to leave the Territory.

Q. And did he die en route from Japan to Hawaii?

A. Yes, that's right; at Hongkong.

Q. Now you were the same Tsutsumi who is referred to in various powers-of-attorney?

A. Yes.

Q. That have been introduced in evidence?

A. Yes.

Q. The first powers-of-attorney ran to you and Mr. Tsuda, and were drawn sometime in the year 1935, is that correct?

A. Yes, right.

Q. And that was about the time that the Fujinos left for [412] Japan?

A. Yes.

Q. And the second power-of-attorney was 1940, or thereabouts, is that right?

A. 1941.

Q. And your haole name is what?

A. Harry.

(Testimony of Harry Yasuo Tsutsumi.)

Q. I ask that, because Mr. Tsuda at some place in his testimony referred to "Harry." Do these power-of-attorneys refer to "Harry"?

A. No, they do not.

Q. Your Japanese name, first name, is Yasuo?

A. Yes.

Q. And like a lot of Japanese boys born in the Territory you adopted——

A. No, I have it legalized. I did legalize it; that name.

Q. That is, you had the name "Harry" legalized for you? A. Yes.

Q. By the Governor of the Territory, or were you registered as Harry at birth?

A. By the Governor.

Q. Now can you tell the Court anything about the handling of correspondence between Japan and the Oahu Junk Company?

A. When Mr. Fujino left the Territory I think it was [413] about a week and one-half or two weeks, I could not remember what date it was, but I had a conversation with Mr. Yotaro Fujino at that time, and he asked me that he is going to let me be one of his power-of-attorney and I rejected that on the ground that I did not have enough experience in business, and Mr. Fujino told me at that time that since Mr. Yamamoto would be here in—acting for Mr. Fujino, since I could consult Mr. Yamamoto and Mr. Tsuda was my senior employee there, as long as I could cooperate with them and

(Testimony of Harry Yasuo Tsutsumi.)

do the things that should be done, why that is all that was necessary, and I spoke to Mr. Yotaro Fujino that Mr. Yamamoto was there, and he did not answer my question at that time, but I am sure he told me that—that he told, but I am sure he didn't say anything to me, but he said something like if Mr. Yamamoto won't or didn't drink liquor as he did—I kind of recall that is what he mentioned at that time, saying if Mr. Yamamoto did not have the habitual drink—if he was not a habitual drinker, I am sure Mr. Yamamoto might have taken my place at that time.

Q. Well, now, my question was: How was correspondence handled after the Fujinos went to Japan?

A. All the correspondence in business, or any business came through the Oahu Junk Company, but it was handled by Mr. Yamamoto because he did all the writing and reading of the Japanese character.

Q. And how about Fujino, could Yotaro Fujino write in [414] English?

A. No, Mr. Fujino did not write in English.

Q. Then the correspondence from Japan to the Oahu Junk Company was done in Japanese?

A. Yes, in Japanese.

Q. Then when the letter was received, or a telegram was received from Yotaro Fujino in Japan, where would that go?

A. It comes to the Oahu Junk Company, and in turn we will either send it by somebody, some of

(Testimony of Harry Yasuo Tsutsumi.)

our boys, or somebody will take it up to his home, because most of the cases he was not at the store, at the office.

Q. Then would he tell you the contents of it, and so forth?

A. Yes. It was the customary practice that we were quite busy in our work, so usually he would just tell us the main items that were in the letter; and we did not bother, you know, to tell the whole letter, and even if he does read it we would not understand very much about it, so he just pick the items that are in there and let us know what they are.

Q. Do you read Japanese characters?

A. No, I cannot.

Q. What is that?

A. I cannot read—so that I could understand the full meaning of it.

Q. Did you go to Japanese language school?

A. Yes. [415]

Q. While you were a boy at Wahiawa?

A. No, I lived most of my life at Pearl City; not at Wahiawa.

Q. Did you attend Japanese language school at Pearl City? A. Yes, I did, a little.

Q. How long a period of time, would you say?

A. Five or six years.

Q. Six years. And was Japanese script or the writing of Japanese script taught you there?

A. Yes, they did.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Do you know how many characters there are in Japanese? A. No, I cannot tell you.

Q. Well, do I understand then that you have no facility in the reading of Japanese script; at least written by an old country Japanese?

A. Yes, I do not.

Q. You might understand pidgen-Japanese—is that about the answers? A. Yes, that's right.

Q. So then you and Tsuda relied upon Yamamoto to translate and tell you the contents of the correspondence that originated in Japan, is that correct? A. Yes. [416]

Q. And, conversely, when you had to send anything to Japan to old man Fujino what happened?

A. Usually Mr. Yamamoto does all the writing for us.

Q. Well, you say "usually." Were there instances where he did not do the writing, and someone else did the writing, if you recall?

A. No, in Japanese he does everything in that; he does the correspondence. There are some cases we used to send some wire and all that, in plain English. We could do that ourselves, so we did that.

Q. In plain English, did you say?

A. Yes. With this firm that we used to handle some cement, and that company had correspondence in English, and so we did.

Q. I see. In some instances you sent telegrams to Japan that were in English? A. Yes.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Now what about the period when Yamamoto was in Japan, just prior to his death; was there any necessity for carrying on correspondence between this office and Japan?

A. No, we had no more of that—We have to—I don't recall any correspondence from this end.

Q. Well, there were some questions put to Mr. Tsuda about some two thousand dollars that was sent to Yamamoto in China, I believe it was. Do you recall anything about [417] that—Hongkong?

A. Oh, yes, that might have been sent, because I think there was something to be bought from the other end, to be shipped to us, to our company here.

Q. That must have been the subject of correspondence, wasn't it, the two thousand dollars that was mentioned, or was it agreed, definite, that you would send him the two thousand dollars? I am just directing my attention to this, because it was—(int.)

A. I don't recall how the thing came. It should have been a cable, maybe, because after Mr. Yamamoto left I cannot recall, it might be some letters that came in, but it could not be very much, because he was on the other end, and he can get in touch with the other corporations that do business with us here.

Q. When did he go?

A. That was April, 1941.

Q. And Kaname arrived here in May of 1941?

A. Yes.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Does Kaname write in Japanese?

A. I think he writes in Japanese.

Q. Now at the time of the incorporation or prior to the time of the incorporation of the Oahu Junk Company do you recall ever calling at Yamamoto's home at any time?

A. Yes, sometime in September, I imagine it was, or [418] in October. September or October, Mr. Tsuda told me that Mr. Yamamoto called on the 'phone that I should go together to his home.

Q. Did you go together to his home?

A. Yes, to his home.

Q. And what took place at that time?

A. Mr. Yamamoto had a letter and he said that Mr. Fujino want to proceed with the incorporation, and another thing was that he want to give the property to Kaname, and if my recollection is right I think he mentioned something about the employees' loan to be wiped out.

Q. That is the first time I have heard about that.

A. Yes, that was in there.

Q. By the way, did you owe the Oahu Junk Company any money?

A. No, I did not, at that time, but my father did.

Q. Did you see a letter that Yamamoto had at that time?

A. Yes, I saw the letter, but of course we did not read inside to the letter, but the letter was on his desk at that time. That was Mr. Fujino's writing.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Would you recognize Yamamoto's handwriting.
A. Yes, I would.

Q. I wish you would examine this Japanese script, underneath the typewritten portion of Exhibit 8, Defendant's Exhibit 8, and I ask you if you recognize that script as the handwriting [419] of anybody?

A. Yes, this is Mr. Yamamoto's handwriting.

Q. And tell me whether you recognize the handwriting beneath the Japanese script.

A. Yes, that is Mr. Yamamoto's handwriting, also.

Q. Are you sure of that? A. Yes.

Q. Prior to this trip of Yamamoto's in 1941 had he made any other trip to Japan on company business?

A. Yes, I think it was sometime in 1939, in 1939, I think, he had a trip there.

Q. And was that on company business?

A. Yes, on company business.

Q. And that was before the incorporation, of course?
A. Yes, that was before.

Q. How long did he remain away at that time?

A. At that time I think it was not very long; maybe that was three or four months, as I recall.

Mr. Beebe: I think that is all.

Cross-Examination

By Mr. Jansen:

Q. Mr. Tsutsumi, what did you and Tsuda do with all the cables and letters that you received after Yamamoto left?

(Testimony of Harry Yasuo Tsutsumi.)

A. We left it on Mr. Yamamoto's desk, and I think one of the employees might have put it away.

Q. Well, didn't you answer that?

A. No. When Mr. Yamamoto left he told us that he would be in there at the firms all over the place where we used to do business.

Q. He would be there?

A. So if there is anything that we have to do, to do it right away, but otherwise refer it—or leave it until he come back.

Q. Well, would you leave cables until he came back?

A. Cable? That depend on what kind.

Q. What date did Mr. Yamamoto leave for Japan? A. May, 1941.

Q. I thought you said it was April, 1941?

A. I am sorry. April, that's right.

Q. What date in April? A. April 4th.

Q. April 4, 1941? A. That's right.

Q. So calling your attention to a cable dated March 26, 1941, that cable was here when Mr. Yamamoto left, is that right?

A. That's right.

Q. All cables that came in that were addressd "Junko, Honolulu" they came to the Oahu Junk Company? A. Yes. [421]

Q. Now, here is another cable, dated June 24th, 1941, addressed to the Oahu Junk Company. Was Mr. Yamamoto here then? A. No.

Q. What did you do about that?

A. Well——

(Testimony of Harry Yasuo Tsutsumi.)

Q. Here is another one dated July 3, 1941. After Mr. Yamamoto left in April he never did come back, did he? A. No.

Q. What did you do about this one dated July 3d. That is also the Oahu Junk Company, is it?

A. Yes.

Q. You see, when you nod your head, we have no answer of "yes" or "no." What did you do about that?

A. I don't recall on these cables, because I had my own paint department and scraps, or anything like that, I never used to do very much on this work.

Q. You and Mr. Tsuda were the attorneys-in-fact. He was the manager and you were the assistant manager?

A. Yes, but this is only for business, and it was not anything concerning his personal affairs or things.

Q. Well, somebody handled the business, didn't he?

A. Yes, Mr. Tsuda used to do most of the things.

Q. Well, we have here another one, July 7th. You got that one, didn't you? [422]

A. Yes—August the 8th.

Q. Here is one in English dated August 9th. Did you do anything about that?

A. Well, we let Mr. Yamamoto know about that.

Q. That was in connection with Mr. Yamamoto's sickness? A. Yes.

Q. And his death is another one? A. Yes.

(Testimony of Harry Yasuo Tsutsumi.)

Q. You did take care of this? A. Oh, yes.

Q. Here is another one, August 10th; that is also to Yamamoto, and another one, August 13th; four of them there, all about Yamamoto, aren't they? A. Yes.

Q. You took care of those?

A. Yes, we did.

Q. Now we will go on. Here is one dated October 15th. Did you do anything about that?

A. Yes.

Q. Of 1941? A. Yes.

Q. What did you do about that?

A. We did let these people know.

Q. You took care of that? A. Yes. [423]

Q. But all of those other cables I have shown you, from June to August, you said you had nothing to do about them at all?

A. I don't recall doing anything of these here.

Q. How about this one dated May 1, 1941; did you say anything about that? That is the one where Yotaro asked you to get those papers for him so he could go to the Philippines.

A. No, I did not take care of these things.

Q. Who did? A. Mr. Tsuda.

Q. He actually took care of them?

A. Yes.

Q. So you did actually execute, or take care of the correspondence, some, there?

A. Yes, we did.

Q. Here is one dated July 14th. That has to do with the two thousand dollars. You took care of that? A. Yes, we did.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Mr. Tsuda, did you? A. Yes.

Q. Here is another one dated May 25th. That has reference to their trip to the Philippines and consular identification. Mr. Tsuda took care of that? A. Yes.

Q. Another one dated December 31—Wait, that is 1940. All of those cables, as a matter of fact, I have shown to [424] you, were initially handled by Mr. Tsuda at least, or something was done to them?

A. Yes.

Q. Is that right? A. Yes.

Q. And he took care of the instructions that were contained in them, didn't he?

A. I could not say whether everything was done, because I don't recall.

Q. While you were there—You were one of the attorneys-in-fact, and you were also assistant manager. Didn't you know, while you were there—didn't you know that those matters were all taken care of? Somebody had to do that business.

A. Yes, maybe somebody did, but I don't recall myself taking care of these things.

Q. But you know that they came in?

A. Yes.

Q. You were there?

A. Yes, sometime I was around, so I could know, but otherwise I did not know.

Q. Now how about all these letters that I have here; about 13 letters. You look at them and tell me if anybody took care of these. These were all after April 1st, 1941.

A. Well, I don't recall any of these letters.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Well, Mr. Tsutsumi, you are not trying to give us the impression that cables would come in at the rate that you have seen them here in court, and that have been shown to you, and that nobody would take care of it for you?

A. No, somebody might take care, but I myself.

Q. Somebody, in fact, did take care, didn't they?

A. I really cannot say, because I did not take care of these myself.

Q. Then you don't know anything about it. You said before nobody took care of them, that they were put on Yamamoto's desk. That is not so. You do not know anything about that?

A. Along with that, letters that used to come in, I know, because since Mr. Yamamoto was still here if he is come into the store sometime we would have to call him up, if he was coming to the store, otherwise we have to take it up, otherwise we leave it on his table here.

Q. I understand, before he left. But after he was gone to Japan somebody had to take care of this correspondence. You didn't just put it on Yamamoto's desk or stick it in his drawer?

A. No, it was somebody must have taken care, yes.

Q. Certainly.

A. And some of them I knew about these, Mr. Yamamoto's debts and all that; I knew about them.

Q. There are four with regard to them?

A. Yes.

(Testimony of Harry Yasuo Tsutsumi.)

Q. And there are about a dozen or more with regard to other things, and you know that somebody was there in the office and actually took care of those matters, didn't they?

A. Yes, I think somebody did.

Q. And the same is true of the letters. They did not just stick them away without reading them and taking care of them; somebody there in the office took care of them, didn't they?

A. Yes, they must have been.

Q. Certainly.

Mr. Jansen: The two letters, counsel, that I had reference to before, when we offered the other two exhibits, were, 1, a letter dated March 17th from which we made just an excerpt, and another dated March 24th. I wish you would look at them and see if the asterisks were—the asterisks indicate a substantially correct translation.

Q. So after Mr. Yamamoto left there were at least a dozen replies or a dozen letters that came into the business, and they related to the business of the company, and I am not talking now about the time before Mr. Yamamoto's death. They relate to the business of the company, and Mr. Yotaro Fujino, and somebody in the office took care of them. That is right, isn't it? [427]

A. Yes, maybe.

Q. Now, Mr. Tsutsumi, going back to October or November, 1940, when you were at Mr. Yamamoto's house——

A. Yes.

(Testimony of Harry Yasuo Tsutsumi.)

Q. You told us on direct examination that Mr. Yamamoto spoke of only three things, very briefly, at least the way you tell us. A. Yes.

Q. One was the incorporation; one was the land, and the other one was about forgive the employees' debts. A. Yes.

Q. Well, now, did Mr. Yamamoto at that time explain in detail?

A. No, and I haven't heard the details statement.

Q. Did he just say "Mr. Fujino is going to incorporate; give the land to his son, and forgive the debts"?

A. Yes, the incorporation was to proceed.

Q. The incorporation was to proceed?

A. Yes.

Q. But he did not explain what Yotaro had said, that so much stock should be issued, or such and such should be transferred to the corporation?

A. No.

Q. Or any of the details as they were worked out later? A. Yes.

Q. He did not explain any of that? [428]

A. No, I haven't heard.

Q. He just said the incorporation will proceed, with regard to the corporation? A. Yes.

Q. And he just said there will be a deed to the land to Kaname? A. That's right.

Q. And he just said that the debts of the employees are going to be forgiven? A. Yes.

Q. That is all he said?

A. That is all I heard at that time.

(Testimony of Harry Yasuo Tsutsumi.)

Q. Did he at any other time have any letters from Yotaro Fujino that you saw with reference to the details of this transaction?

A. No, I haven't seen any letter, but Mr. Yamamoto was always discussing with Mr. Murakami, and so I knew the corporation was to be incorporated, as I understand at that time, yes.

Q. In October—November, 1940, when you were at Yamamoto's house, do you recall that Yamamoto said that Yotaro wants to keep parental control of the stock; he wants to make sure, that the children do not squander the money?

A. Well, I did not hear at that time. I think that was discussed later, when everything was going to be incorporated, [429] I think.

Q. It was said, though, that the reason for getting the notes back from the children was to keep parental control?

A. Yes.

Q. What do you mean by "parental control"?

A. Well, Mr. Fujino's idea was that, that they do not want the children to just spend foolishly, and that is the main reason, I think it was; I am not sure.

Q. And in the case of Kaname he was going to go to school for maybe two or three or four years, and he wanted to still be able to tell Kaname that he was the father and the business?

A. Later on I am sure Mr. Fujino's intention was to give it to him.

Q. Yes, eventually. That is everybody's intention, I think, to their children, but for the time

(Testimony of Harry Yasuo Tsutsumi.)

being he wanted Kaname to know that he was still the business—— A. Yes.

Q. That he was still the father, and still the head of the family. A. (No audible answer.)

Q. About this dual citizenship, it is not too important, but there is one question. You know that the registration of Japanese children was made here at the Consul's Office, the Japanese Consul's office, when they were born, wasn't it? [430]

A. Yes.

Q. And that is how most of the Japanese here acquired a dual citizenship? A. Yes.

Q. So it would not be necessary to go to Japan to find out whether there was a registration?

A. No.

Q. But you do not know whether you were registered or not?

A. No, I did not even ask my father about it.

Q. Your father is not living now?

A. No, he is with me.

Q. But you have never asked him?

A. No, I did not care to, and it is not necessary for me, anyway.

Q. You assumed that you were; I mean when the Judge first asked you. A. Yes.

Q. You were asked if you were? A. Yes.

Q. You do not have any reason to believe that you were not? A. No.

Mr. Jansen: No further questions.

The Court: Redirect? [431]

(Testimony of Harry Yasuo Tsutsumi.)

Redirect Examination

By Mr. Beebe:

Q. How long did this first conference at Yamamoto's home last, if you recall?

A. You mean at that time?

Q. Yes.

A. It was not very long. I think it is only about 15 or 20 minutes; that is all I can recall.

Mr. Beebe: I think that is all.

Mr. Jansen: No further questions.

(Counsel on both sides request a recess.)

The Court: Very well. We will take a 10 minute recess.

(Recess.)

Mr. Jansen: May it please the Court, two other letters we propose to offer as a part of the cross-examination of the witness Tsuda are: First, the letter dated March 17, 1941, from which we have extracted a translation of only part of the letter, and another dated March 24, 1941, from which we have also extracted only a portion of the letter, and we offer both of these letters in evidence.

The Court: You are offering the full letter, but only a partial translation?

Mr. Jansen: Yes, only an extract.

The Court: It seems to me if you are offering the full letter I should be able to read the whole thing. However, if [432] you only want to offer part of it—

Mr. Jansen: We could have the whole thing translated.

The Court: But you are both in agreement that the only part of it that is significant are the extracts? In other words, you don't want anything in evidence that I cannot read.

Mr. Jansen: Well, perhaps we can shorten it at this time by saying that we propose, and Mr. Beebe will agree, that this letter of March 24th confirms the exchange of telegrams between the Oahu Junk and Yotaro Fujino in Japan, regarding this new iron and that aircraft factory to which Mr. Murakami testified. That confirms the exchange of telegrams.

Mr. Beebe: That's right. It shows what we want in evidence from it; that the original telegram was received, and covers the name and address, and the necessary application for the export permit. This is the telegram which Mr. Murakami said was sent through, and then it confirms the telegram which is Exhibit 8, to the aircraft factory, or about the aircraft factory, and so forth.

Mr. Jansen: And this other letter, the only part I had reference to was that part with regard to new iron, and it does make some reference to it, but I am not particularly concerned about having it in evidence. Perhaps you will be willing to agree that it refers to——

Mr. Beebe: Frankly we cannot make it out. Mr. Murakami asked me what it meant, and I told him I did not know. I have [433] no objection to the

translation going in evidence, as being part of a letter dated March the 24th, 1941.

Mr. Jansen: All right.

Mr. Beebe: Without the Japanese going in at all.

Mr. Jansen: The letter also indicates it was received April 7th or April 8th, and the pencil notations, 4/7 or 4/8 is on there.

Mr. Beebe: I will agree to it.

Mr. Jansen: Then you suggest we offer only the extracts, the translations?

Mr. Beebe: In view of what the Court said, I have no objection to the translation going in, and let the record show that it is a portion of a Japanese letter dated March the 24th, 1941, and that it shows a pencil notation on the bottom of the page "4/7" or "4/8."

The Court: Very well. That, therefore, may become government's Exhibit 9.

(The document offered in evidence, consisting of one sheet, is received and marked: "Defendant's Exhibit "9.")

[Defendant's Exhibit "9" set out on page 458.]

Mr. Jansen: That is all the letters that I have.

Mr. Beebe: At this time, if your Honor please, we have located the original deed from Chiyono Fujino to Kaname, conveying the property to Kaname subject to a life estate, and it is recorded in Liber 1259, at pages 472—It is recorded in [434] the Bureau of Conveyances, on the 13th day of December, 1934.

Mr. Jansen: No objection.

Mr. Beebe: I might as well put it in, and then the whole record is there, if the Court please.

The Court: Very well. It will be received as Plaintiff's Exhibit "S."

(Document offered in evidence is received and marked: "Plaintiff's Exhibit S.")

["Plaintiff's Exhibit S" set out on pages 528 to 531.]

Mr. Beebe: Now this is as far as I can go until tomorrow morning, and we will know about the other matter, of Mrs. Yamamoto.

Mr. Jansen: We also have the problem of Yotaro Fujino. I would like before either side completely rests, and ask at this time, that I have the opportunity to decide whether I am willing to admit that Yotaro would testify as they suggest he would. Of course I don't know what they are going to suggest—but I would like to have the opportunity.

Mr. Beebe: There is no question about that. I haven't gone over the questions, but I will make it the first order of business after we are through with the taking of testimony, to get our proposal out. You can understand that in the main I will be groping in the dark, at least for the financial side of it.

Mr. Jansen: Well, I am not too concerned about that. I am not sure—I do not know exactly what you are getting at [435] there, and I am not sure

that I would be willing to admit what you might claim in regard to that. I have a notion that it is your idea that Yotaro Fujino, in Japan, at all times had plenty of money to take care of himself with, and you would hope to prove that.

Mr. Beebe: Well, let's put it this way——

Mr. Jansen: If that is it, I wouldn't object to that.

Mr. Beebe: I want to protect myself against an argument or a finding by the Court that it would be foolish to assume that a man would transfer all of his property to his son up here, and leave himself, as I said before, in a condition of starvation.

Mr. Jansen: Well, he had \$35,000 we know, in 1938 or 1939.

Mr. Beebe: Yes, there is no question about that. But where that went to, or what he did with it, I don't know.

The Court: I take it you are preparing such a proposal, which will not be ready, apparently, for some days?

Mr. Beebe: We have been working on it.

The Court: I wonder if we could continue this case until that proposal is ready, and bring in the proposal, and your other witness, whom I understand is your last witness?

Mr. Beebe: That would be all right with me, if satisfactory with Mr. Jansen. I know he is out here for these cases, and expects to leave—— [436]

Mr. Jansen: I had an idea it would be ready by this time, because, frankly, I suggested it two weeks ago.

Mr. Beebe: There is no question about that.

Mr. Jansen: And I have made reservations to leave Saturday the 16th, and I expect we will start tomorrow with the other short case, and then the next week on the other remaining three cases, and we probably will be able to finish that one by Friday night—the other one.

The Court: Well, then, maybe we had better take up this other witness tomorrow and get that accomplished, anyway. Do you think Mrs. Yamamoto will be an extended witness?

Mr. Beebe: I don't see how she can be.

The Court: I was wondering myself what she can testify to.

Mr. Beebe: Well, I haven't any hesitancy in stating what I hope to bring out, that a lot of this correspondence was kept up at her home, and that on—right after December the 7th, that everything that was written in Japanese she burned up, as most Japanese did.

Mr. Jansen: And there is the other point, too, that counsel is going to check up with that office.

Mr. Beebe: Yes.

The Court: We will adjourn at this time, and take this case up tomorrow morning at nine.

(Adjourned to 9 o'clock a.m., November 8 1946.) [437]

Friday, November 8, 1946

9:30 o'clock A.M.

The within-entitled matter came duly on for further hearing on Friday, November 8, 1946, at the hour of 9:30 o'clock a.m., all parties being present as before, whereupon the following further proceedings were had and done, and testimony taken:

The Court: Are the parties ready?

Mr. Beebe: Ready, your Honor.

Mr. Jansen: We are ready.

The Court: You may proceed.

Mr. Jansen: Before we start with the next witness, I wonder if I might ask Mr. Tsuda one further question on cross-examination, and Mr. Kaname Fujino.

Mr. Beebe: No objection.

The Court: Very well.

TOKUICHI TSUDA

a witness for the plaintiff herein, having been heretofore duly sworn, was recalled for further cross-examination, and testified as follows:

Cross-Examination (Resumed)

By Mr. Jansen:

Q. Mr. Tsuda, there is one thing I am not sure that the record is clear on: Until the corporation was formed the land which is involved in this case was carried on the books as [438] property of Yotaro Fujino's business, wasn't it?

A. Prior to the incorporation?

(Testimony of Tokuichi Tsuda.)

Q. Yes. A. Yes.

Mr. Jansen: That is all.

Mr. Beebe: May I have that again?

(Last two questions and answers, as above transcribed, were read to counsel by the reporter.)

Redirect Examination

By Mr. Beebe:

Q. Now, how were those books entitled?

A. Prior to the incorporation?

Q. Yes.

A. That's right, the Oahu Junk Company.

Q. Did his name show any place on the books of the Oahu Junk Company?

A. No, I do not think his name was shown on the books.

Q. Have you any of those books here?

A. No, I haven't got any.

Q. Where are those books?

A. Up there at the office—inside office—because I was not in charge of the books.

Q. You were, or were not? A. I were not.

Q. You were not? [439] A. I was not.

Q. What I am driving at, I notice that a lot of these audited reports show "Y. Fujino, doing business as Oahu Junk Company." Now when you answered his question as you did, did you mean that they were carried as assets of the business of Y. Fujino, doing business as Oahu Junk Company?

(Testimony of Tokuichi Tsuda.)

A. Y. Fujino doing business as the Oahu Junk Company, and my impression is that the Oahu Junk Company was owned by Yotaro Fujino.

Q. Mr. Tsuda, was it also Y. Fujino doing business as Oahu Junk Company and Oahu Lumber & Hardware Company? A. Yes.

Recross-Examination

By Mr. Jansen:

Q. And all of them, those two different designations, junk and hardware, were both included in the corporation later? A. Yes.

(Witness excused.)

KANAME FUJINO

the plaintiff herein, having been heretofore sworn, was recalled for further cross-examination, and testified as follows:

Cross-Examination

By Mr. Jansen:

Q. Kaname, when you went to the Bishop National Bank, [440] just before this trial started, to pick up this deed, Plaintiff's Exhibit "H"—you remember doing that? A. Yes.

Q. Your attorney asked you to go to the bank and get it? A. Yes.

Q. You gave the bank a receipt for that deed, didn't you? A. Yes; took it out.

(Testimony of Kaname Fujino.)

Q. And that is the original deed which was filed and which you said was filed by you in May, 1941?

A. Yes.

Q. Now in 1941 when you went to the bank to pick up this deed to take it to file, did you give them a receipt for it at that time?

A. I believe so.

Q. Are you pretty certain of that?

A. Yes.

Mr. Jansen: That is all.

Mr. Beebe: No question.

(Witness excused.)

Mr. Jansen: Now, may it please the Court, I have checked the records of the Bishop Bank and they show no record of any deed being left there from March to May, 1941, and then no record of any deed having been left there or any [441] receipt, so far as they have been able to determine or discover. I can produce a witness from the bank to testify to those facts if necessary.

Mr. Beebe: I will check with you—Did you check with Mr. Stanley?

Mr. Jansen: Mr. Stanley, yes.

Mr. Beebe: Did you talk to K. Y. Ching, in the Safe Deposit Department?

(Off-the-record discussion between counsel.)

Mr. Beebe: I will check, if the Court please, and see if they can locate any.

Mr. Jansen: Will you do that as soon as we get through here?

Mr. Beebe: As soon as we get through here I will do it.

The Court: All right.

Mr. Beebe: We wish to call Mrs. Yamamoto as a witness. We have agreed, if your Honor please, with your Honor's consent, that Mr. Adashi may act as interpreter, and Mr. Murakami can check on it.

The Court: Double check it?

Mr. Beebe: Yes.

The Court: All right.

(Mr. Masayuki Adashi was sworn to act as Interpreter from English to Japanese and Japanese to English. Interpreter not sworn.)

The Court (To the Interpreter): Have you ever interpreted in Court before?

Mr. Adashi: No, I have not.

The Court: Let me give you a little bit of instruction. Regardless of what you may think, you are the interpreter and you are going to function just as a sort of a telephone, and you repeat exactly, in translating, word for word, what the attorney says by way of a question, and then repeat the answer given by the witness, word for word, so you are just functioning like a telephone. Don't you put any of your own twists on the questions and answers.

MRS. MAIYO YAMAMOTO

called as a witness for the plaintiff, being first duly sworn through the Interpreter, Mr. Masayuki Adashi, testified as follows (through the Interpreter) :

Direct Examination

By Mr. Beebe :

Q. Please state your name.

A. Maiyo Yamamoto.

Q. How old are you, Mrs. Yamamoto?

A. Sixty-two.

Q. You live here in Honolulu? A. Yes.

Q. And how long have you lived in the Territory of Hawaii? [443]

A. I came here 1907.

Q. And have you resided continuously in the Territory since that time? A. Yes.

Q. Have you ever been married? A. Yes.

Q. Is your husband living or dead?

A. Died.

Q. Do you know, approximately, when your husband died? A. August, 1941.

Q. Now where did he die; here in the Territory, or away from the Territory?

A. He died in Shanghai, China.

Q. And what was your husband's name?

A. Seitaro Yamamoto.

Q. Prior to your husband's death for whom did he work? A. Oahu Junk.

Q. Here in Honolulu? A. Yes.

(Testimony of Mrs. Maiyo Yamamoto.)

Q. And who was the owner, if you know, of the Oahu Junk Company?

A. Fujino, at the beginning.

Q. At the beginning? A. Yes.

Q. Now which Fujino are you referring to?

A. At first, when he begin to work, it was Yotaro Fujino, but after that I don't know.

Q. Now when did your husband start to work, if you recall, for Yotaro Fujino?

A. Up to the time of his death, approximately sixteen years.

Q. And your husband died, as I recall it, in 1941, is that right? A. Yes.

Q. And he worked for the Oahu Junk, as you recall, for sixteen years prior to that time, approximately?

A. Yes, I think so, but I do not know exactly.

Q. Now did you know Yotaro Fujino?

A. Yes.

Q. In 1940 was Yotaro Fujino in the Territory of Hawaii? A. No, he was not.

Q. When did he leave the Territory of Hawaii, if you know? A. I don't remember when.

Q. Well, was it years before 1940—2, 3, 4, 5—or can you tell us, approximately?

A. My husband went back in 1941, and I think five or six years prior to that, but I don't remember.

Q. I see. Now had your husband gone back to Japan at any time prior to 1941? [445]

A. Yes.

Q. When? A. I think 1939, April.

(Testimony of Mrs. Maiyo Yamamoto.)

Q. Now where was Yotaro Fujino at that time; that is, in 1939? A. He was at Tokio.

Q. And had he been away for some years prior to 1939?

A. He was at Tokio—I am not sure, but I think he went back four or five years prior to that.

Q. By “he” you mean Yotaro Fujino?

A. Yes.

Q. Now during the time that Yotaro Fujino was in the Territory can you tell the Court the relationship, the business relationship, between Yotaro Fujino and your husband?

A. He was used to work there, chiefly, doing or writing letters.

Q. Now after Fujino went to Japan did your husband keep on working for Oahu Junk Company? A. Yes.

Q. And do you know Tokuichi Tsuda?

A. Yes, I know.

Q. And Yasuo Tsutsumi? A. Yes, I know.

Q. Do you know where they worked?

A. Yes. [446]

Q. Where? A. Oahu Junk.

Q. For how long a period of time would you say that they worked for the Oahu Junk Company?

A. I don't know because my husband never told me anything about the company.

Q. I see. Now state whether or not your husband used to bring letters and correspondence over from Oahu Junk? A. Yes.

Q. Have you seen the letters?

A. I have not read the letters, but I saw he brought back letters.

(Testimony of Mrs. Maiyo Yamamoto.)

Q. I see. Now after Fujino went to Japan state whether or not Tsuda and Tsutsumi used to come up to your house?

A. Yes, he came quite often, bringing letters from Fujino.

Q. By "he," who do you mean?

A. Tsutsumi. You asked me about Tsutsumi, so I referred to Tsutsumi.

Q. Well, all right, if you so understood. Now, did Tsuda come up to the house?

A. Yes, he used to come.

Q. Would they come together, or sometimes one come and sometimes another?

A. They used to come together, sometimes separately. [447]

Q. Do you know anything about the incorporation of the Oahu Junk Company?

A. I don't know, because my husband never used to discuss that matter with me.

Q. All right. Now state whether or not your husband had various Japanese papers, letters and so forth, in your home at the time of his death?

A. Yes, I had.

Q. Were those letters and so forth in Japanese?

A. Yes.

Q. And where are those papers, documents, letters, books or anything else, now?

A. At the outbreak of the war I was afraid, so I burned everything.

Q. That is right after December the 7th, everything in Japanese you burned up, is that correct?

A. Yes, I was afraid.

(Testimony of Mrs. Maiyo Yamamoto.)

Q. Now where did he keep these books, papers and letters and so forth, in your home?

A. It was situated in a cabinet, in boxes, and I burned that together with the boxes.

Q. Now after your husband's death in 1941 were you paid any money by the Oahu Junk Company?

A. Yes, I did.

Q. How much were you paid? [448]

A. Two thousand dollars.

Q. Anything in addition to that?

A. I don't have anything. I spent that money.

Q. I don't mean that. Were you paid anything in addition to the two thousand dollars? What I am specifically driving at, were you paid a sum of \$300 for funeral expenses, if you know?

A. Yes. The company paid the funeral expenses.

Q. Do you know the amount of that?

A. I don't know. I don't remember.

Mr. Beebe: I think that is all.

The Court: Cross-examination?

Cross-Examination

By Mr. Jansen:

Q. Did the mailman deliver letters from Mr. Fujino to your house?

A. Will you repeat the question, please.

Q. Did the mailman deliver letters from Mr. Fujino, in Japan, to your house? A. Yes.

Q. These letters that Tsuda and Tsutsumi had were letters to the Oahu Junk Company?

A. Yes, it was addressed to Oahu Junk, and my husband used to read that.

(Testimony of Mrs. Maiyo Yamamoto.)

Q. Would Tsuda and Tsutsumi take them back with them [449] when they left?

A. The letters from Japan were mostly left at my home.

Q. Who told you to burn the papers after the war had started?

A. Nobody told me, but I was afraid, so I burned them.

Q. Did you look at the papers before you burned them? A. No, I never examined them.

Q. Were any of the Oahu Junk Company papers in those papers that you burned?

A. Maybe there was, but I did not have a chance to examine. I was so afraid so I burned them.

Q. Why didn't you take the Oahu Junk Company papers back to the company?

A. I could not read. I cannot say there was any, but I was so afraid so I burned them without examining them.

Q. Since you cannot read you don't know whether there were any Oahu Junk papers in that stuff that you burned? A. I cannot tell.

Q. How do you know that letters from Fujino in Japan to your husband came to your house by the mailman?

A. When I opened or got the mail from the mailman there was some letters, so I thought that was for my husband.

Q. Now would your husband take the papers that Tsuda and Tsutsumi brought up from the house, or to the house, back to the Oahu Junk Company later? [450]

(Testimony of Mrs. Maiyo Yamamoto.)

A. Will you repeat that question?

Q. Would your husband take the papers that Tsutsumi and Tsuda brought to the house, back to the Oahu Junk Company, later?

A. I don't know.

Q. Did your husband carry papers back and forth between the house and the Oahu Junk Company?

A. I don't know. I didn't take notice of my husband's departure, and coming in, each time.

Q. Were there any letters that you could tell, in the papers that you burned after the war started?

A. Yes, there was letters I burned together with all the books and the papers.

Q. What did the books look like?

A. Magazines.

Q. No account books were among the papers that were burned by you?

A. I don't know. I burned everything in making Japanese "furo"—that is, hot bath, so I shoved the whole thing in there, and so I don't know.

Q. Before your husband left for Japan did he tell you what to do with his papers?

A. No, he didn't say anything.

Q. Before your husband left for Japan did he take some of these papers down to the Oahu Junk Company? [451]

A. Maybe he did, but I didn't watch him every time, but he is out of the house, so I don't know.

Q. Had you ever seen the papers or looked at them before the time that you burned them?

(Testimony of Mrs. Maiyo Yamamoto.)

A. No, I did not see, because I could not wait. I thought as long as I burned the whole thing—it was safe to burn everything.

Q. Were there many papers like this, among the papers that you burned? (Indicating.)

A. There might be some, but I never took them out of the envelopes, and I do not know. I burned with the envelopes.

Q. Can you try hard and try to remember and give us some idea how many envelopes you may have burned?

A. Approximately, maybe, there was about thirty.

Q. Thirty? A. Yes.

Q. Are you sure now that that is about all; thirty envelopes or letters—envelopes with letters in them?

The Court: She said “maybe 30.”

Mr. Jansen: Maybe 30—

A. I wanted to make sure; as sure as I could. That is approximate. I never counted.

Q. Were the envelopes all in a box or in a big envelope or were they just loose?

A. Some was in a small paper box, and some scattered in [452] the desk drawers, but I bundled them all together and burned them.

Q. Would you think that there were as many as one hundred letters, or would you say it was closer to thirty letters?

A. I don't remember, I did it so hurriedly. I was so afraid, so I didn't count them.

(Testimony of Mrs. Maiyo Yamamoto.)

Q. Were the envelopes with these letters, were there any enveloped that showed they had come from Japan?

A. Well, I guess that was from Japan.

Q. You guess that? A. Yes.

Q. Did your husband ever tell you anything about his business affairs?

Mr. Beebe: Just one second, please. In the last translation, might I ask whether she said it was written in Japanese, and that is the reason I guess it was from Japan?

Interpreter: That is right. That is correct. She said: "It was written in Japanese, so I guess that was from Japan."

Mr. Jansen: That is the impression I got.

Mr. Beebe: May the record be amended to that effect?

Mr. Jansen: Certainly.

The Court: Yes.

Q. Did your husband discuss any of his business affairs with you? [453]

A. No, he never discussed; he never tells business affairs to a woman.

Q. Was he the boss at the Oahu Junk Company?

A. No, he was employed by the Oahu Junk.

Q. Employed by them? A. Yes.

Q. Did he spend much time at the Oahu Junk Company? A. At the time?

Q. Yes.

A. He was in poor health for sometime. He used to come back early, and most of the time he

(Testimony of Mrs. Maiyo Yamamoto.)

used to work at home, but since he died, five years ago, I don't remember so much.

Mr. Jansen: No further questions.

Redirect Examination

By Mr. Beebe:

Q. Do you read any Japanese at all, Mrs. Yamamoto? A. No.

Q. Can you write your name in Japanese?

A. Yes, I can write my name.

Mr. Beebe: I think that is all. Thank you, very much.

The Court: All right, you are excused. Thank you.

(Witness excused.)

Mr. Beebe: There are two things, if your Honor please. Yesterday when I went back to the office, I did not do all the things I promised; to look up our office records, with Mr. Edmondson, [454] and I will check with Mr. Edmondson and check with the bank this morning. And if we could meet up here, say at 1:30 this afternoon, we can close all phases of the case at that time.

The Court: All right. This case may be continued, then, until 1:30 this afternoon, and we will take up the other case.

(Whereupon, an adjournment in this cause was taken until 1:30 o'clock p.m., of this date, November 8, 1946.)

Friday, November 8, 1946,
1:45 o'Clock P.M.

The within-entitled matter came duly on for further hearing, pursuant to the adjournment, at 1:45 o'clock p.m., Friday, November 8, 1946, all parties being present as before, whereupon the following further proceedings were had and done:

The Court: Are you ready?

Mr. Beebe: We are ready to proceed.

Mr. Jansen: Ready, your Honor.

The Court: You may proceed.

Mr. Beebe: During the noon hour, if your Honor please, I did no chore, and, according to our files, on December the 4th, 1940, we received from the Bishop National Bank various documents: a certificate of title, Number 17544; five certificates—I think what Mr. Edmondson intended to say was “search of title,” five searches of title; various deeds—the searches of title being by Wikander—and various deeds; two photostats of power-of-attorney of Chiyono Fujino and Yotaro Fujino, and power-of-attorney of Chiyono Fujino recorded in Book 1270 page 44.

On December 5, 1940, an opinion was written to the Bishop National Bank of Hawaii, Honolulu, Hawaii: “Gentlemen,” and then the head is “Yotaro Fujino mortgage.”

May I read this into the record, if your Honor please?

The Court: Yes. [456]

Mr. Beebe: (Reading.) "This mortgage covers six pieces of property. The first two pieces are subject to existing mortgages to you, and the certificates of title should be brought down to date. Please check payment of this year's taxes on all of the property as the certificates of title on the 3d, 4th and 5th pieces do not show that the second half of 1940 (numerals) taxes has been paid, and the sixth piece is Land Court.

"With regard to the fourth piece of property, it was conveyed to Mr. Fujino by Bishop Trust Company, Limited, trustee, under deed of trust made by Yong Ahin. The certificate does not show that the trustee had power to sell and convey. I think this should be shown.

"The fifth piece of property was acquired from your Mr. Ballentyne, who in turn acquired it after foreclosure of mortgage from Guardian Building & Loan Association. This title was the subject of several suits, but we assume you have previously checked the title and are satisfied that it was clear when Mr. Ballentyne acquired it.

"The sixth piece is subject to the inchoate dower of Maiyo Yamamoto. Under your instructions we have prepared a petition to the Land Court to remove this encumbrance, and we await the signing of the petition and securing of the order of the Land Court clearing title. [457]

"We were instructed to make the note for fifteen thousand dollars (numerals) payable one year after date with interest; after you instructed us verbally to make the note on demand, which we have done.

“The application for the mortgage shows that the mortgage is to be secured for all advances up to twenty-five thousand dollars.

“We call your attention to Chapter 148-A, Session Laws of 1939, at page 211, which provides that a mortgage may secure a deed for present and future advances. Where there is no contractual obligation by the mortgagee to make future advances, they are a prior lien over any mortgages, etc., recorded subsequent to the making of such future advances, but they are not a prior lien if the future advances are made subsequent to the recording of the second mortgage or lien. In other words, if you contracted before hand to make the future advances up to a definite amount they would be protected over all subsequent mortgages and liens, but in the absence of such a contract you should search the record every time to ascertain that no intervening mortgage or lien has attached to the property, if you want your future advances to be a first mortgage. We understand you are satisfied in this present case not to contract to make the future advance, and that if you should make them you will protect yourselves by searching the record. [458]

“Before the mortgage is made you should secure proper power-of-attorney from Mrs. Fujino authorizing the release of her dower. Her existing power-of-attorney does not authorize such release, nor does it authorize borrowing money. We drafted alterations to Mrs. Fujino’s power-of-attorney to cover this. We understand Mrs. Fujino will sign the note.

"If there are any court costs in connection with the petition to the Land Court we shall notify you later.

"Yours very truly, Smith, Wild, Beebe & Cades," and initialed by Mr. Edmonson. I know that is his signature and initials.

Mr. Jansen: So we don't misunderstand, it was on that same day, I think, that the draft of the mortgage appeared.

Mr. Beebe: Yes.

Mr. Jansen: The 5th of December.

Mr. Beebe: Yes.

Mr. Jansen: Exhibit "G"?

Mr. Beebe: Yes.

Mr. Jansen: All right.

Mr. Beebe: There is one thing further, if your Honor please. After leaving here I went down to the Bank of Bishop and saw Mr. Gramberg, and ascertained that they keep duplicate receipt books where a carbon of the original receipt is kept, and they have a receipt book closing December 11, 1940, with [459] the last number in that receipt book being 2000, and the next receipt book then begins at 2201—in other words, there is one receipt book missing. This receipt book beginning with 2201, commencing with one receipt May 5, 1941, and goes right down. That receipt book does not disclose that at any time from May 5, 1941, through June or July, was there any receipt given by Kaname Fujino for any paper that he got from them.

The Court: That covers the receipt. The other question and the other matter concerning which you were asked to investigate was to see if you could supply information on, was as to whether the bank also had any record of ever having received it in the first place.

Mr. Jansen: In that connection, may it please the Court, they have in the bank what they call a safe keeping record, which keeps a chronological record for all documents; documents that are left with the bank for safe-keeping, and I personally examined the safe keeping record and found no entry either with regard to Fujino or the Oahu Junk Company during the period from January the 1st, 1941, until July 1st, 1941; no entry of any document having been left with the bank for safe-keeping during that period.

Mr. Beebe: I am willing that the record should show that, and I understand also that Mr. Jansen is willing that the record will show that on May 19, 1941, Kaname Fujino [460] registered, or was issued a receipt by the Bureau of Conveyances for the receipt of a deed from Yotaro Fujino, by attorney, to Kaname Fujino; that in the Bureau of Conveyances, also on the same day, there has been issued a receipt for a deed from Yotaro Fujino to Kaname Fujino, and Mr. Jansen, I think, being further willing to stipulate that at least so far as this second deed is concerned that it was necessary that a transfer certificate of title be deposited with the deed in the office of the assistant registrar. Is that correct?

Mr. Jansen: Yes. It was my understanding that Kaname Fujino had testified that on May 19, 1941—that is the date that these papers were filed here, he had picked them up at the bank. I am not sure.

Mr. Beebe: I believe that is the case, according to the record.

The Court: Apparently the bank has no record of it. I don't know whether it is important or not. Do either of you attach any significance to the fact that the bank hasn't any record of it?

Mr. Beebe: I do not, but Mr. Jansen might.

Mr. Jansen: I do.

The Court: All right. We will await your argument on the point.

Mr. Beebe: Now Mr. Jansen has suggested, if your Honor please, that this matter be continued until next Friday, and [461] during the interim then we will try to get together on the testimony of Yotaro Fujino, and if we can, o.k.; if we cannot then by that time we may have something else worked out, if that is satisfactory with your Honor.

The Court: Yes. That would be November 15th.

Mr. Beebe: Yes, your Honor.

The Court: At 9 o'clock.

Mr. Jansen: Yes, your Honor.

The Court: One thing I would like to know. It may not be particularly important, but with regard to the shares of stock in the corporation issued to the plaintiff, for which he gave his father a twenty

thousand dollar note, it is not clear to me whether or not the stock was pledged as security for that note.

Mr. Jansen: It was my understanding that that was clearly established, that he had pledged the stock, through his attorneys-in-fact, as security for the note of twenty thousand dollars.

The Court: I would have expected so.

Mr. Beebe: Well, if the record doesn't show that, if your Honor please, we will stipulate that that is the fact.

Mr. Jansen: Yes.

The Court: All right. It may appear in one of the exhibits I have not yet read.

Mr. Beebe: Yes. [462]

The Court: Very well, then, I will continue this case until Friday, November the 15th, at 9 o'clock. We will adjourn at this time.

The Court understands that Hoon Wo Wong has died, and the Court, in respect to his memory, will be closed as of now.

(Adjourned.)

(Whereupon the Court in this cause continued the within-entitled matter until Friday, November 15, 1946, at 9 o'clock a.m.)

Certificate of Temporary Reporter

It Is Hereby Certified that I, R. N. Linn, acting as temporary reporter in this cause on the days of November 6th, 7th and 8th, 1946, after being duly sworn to act as temporary reporter, and that the above and foregoing transcript, pages 111 to 403, inclusive, is a full, true and correct transcript of my shorthand notes taken in the within-entitled matter on the dates therein stated, in the District Court of the United States, in and for the District and Territory of Hawaii, Honolulu, T. H.

/s/ R. N. LINN,

Temporary Reporter.

Honolulu, T. H.,

December 13, 1946.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Honolulu, T. H., November 15, 1946

(The Court convened at 1:35 o'clock p.m.)

The Clerk: Civil No. 704, Kaname Fujino, Plaintiff, versus Tom C. Clark, Attorney General of the United States, acting as Successor to the Alien Property Custodian.

The Court: Are the parties ready for further proceedings?

Mr. Jansen: Yes, your Honor.

Mr. Beebe: If your Honor please, during the interim between the last hearing and this hearing, questions and probable answers were submitted to Mr. Jansen. He advised me that he had wired

Washington for permission to agree that if the questions were propounded to Yotaro Fujino he would answer in the fashion of the answers that we had submitted to him. I understand from Mr. Jansen that he has received word from Washington that he may enter into that arrangement.

Mr. Jansen: The instructions from Washington were that I could use my own discretion in the matter. At least so they told me on the telephone. They said that they had sent a wire to that effect. So I am prepared, your Honor, to have each of the questions and answers inserted into the record, with the understanding, of course, that the admission that we make that the witness, if called and sworn, would so testify, that it does not necessarily imply that we admit that the testimony is binding upon us and that we are free to argue with regard to the testimony and its import from all the evidence in the case. [465]

The Court: Well, let me get this straight. The stipulation is to the effect that if the person were to be called by the Plaintiff——

Mr. Jansen: That's right.

The Court: ——he would so answer——

Mr. Jansen: Yes, your Honor.

The Court: ——so that it wouldn't be binding on you; you would have the right to argue and cross-examine. There is nothing along that line that I can see that you should fear.

Mr. Jansen: I just didn't want to have any misunderstanding in the record.

The Court: All right.

Mr. Jansen: And I suggest that we take each question. Of course, I also want it clearly understood by the preliminary statement that I wasn't waiving any right to object to each particular question on an appropriate ground. And I anticipate that on three or four of the questions I may object and that we may be able to rephrase them, both the questions and answers, in some fashion, when we come to them. But I suggest the best way, if it please the Court, would be to read each question and answer in the record and then, if we have an objection, we will note it at the time.

The Court: I think that is the best way. Proceed.

Mr. Beebe: (Reading from a document.)

"Q. No. 1. Do you own shares of stock in the Oahu Junk Company, Limited, an Hawaiian corporation, having its principal [466] place of business at 1217 North King Street, Honolulu, T. H.? A. Yes."

Mr. Jansen: The answer, we admit, would be "Yes" except that obviously the answer is incorrect because the Custodian has vested the stock and only to the extent that the witness may feel that he has same ownership over and above the actual vesting. We, by allowing the question, don't want to be construed to have admitted that he owns them or has any right in the stock superior to the vesting of the Custodian.

Mr. Beebe: The record may show that. We

understand that those shares of stock were vested in the Custodian.

Mr. Jansen: Yes.

Mr. Beebe: (Reading from a document.)

“Q. No. 2. If so, how many shares?

“A. Two hundred forty.

“Q. No. 3. Does your wife own any shares in the same corporation, and if so, how many shares?

“A. Yes, one hundred nineteen shares.”

Mr. Jansen: And the same is true with regard to the vesting of that stock. We don't want it to be construed as permitting the witness to say that he has any right superior the Custodian.

Mr. Beebe: Yes. (Reading from a document.)

“Q. No. 4. Do you own or have any interest in any land or real property in the Territory of Hawaii? A. No. [467]

“Q. No. 5. If your answer is in the negative to the foregoing, state whether or not you at one time in the past owned any real property in the Territory of Hawaii? A. Yes.

“Q. No. 6. If your answer is in the affirmative to the foregoing, state when you conveyed the real property and to whom conveyance was made?

“A. I conveyed to my son Kaname in 1941.”

Mr. Jansen: Now with regard to that, if it please the Court, we would object to that question and ask

that the answer be stricken upon the grounds that it is incompetent, irrelevant and immaterial, not binding on the Defendant; that the deed, which is in evidence, is the best evidence of any conveyance if any was made.

The Court: Well, that is already in.

Mr. Jansen: Yes, your Honor.

The Court: I don't see what particular harm—

Mr. Jansen: (Interposing.) I want to be certain that there is nothing in the question and answer that by import varies the terms of the written deed, the effect of it, and our objection to the deed and the power of the attorneys-in-fact which is now in evidence. All right.

The Court: Well, with the understanding that that answer would in no way vary the documents that are in evidence.

Mr. Jansen: Yes.

Mr. Beebe (Reading from a document): [468]

“Q. No. 7. If you are not certain as to the date of conveyance, state the year and the month in which conveyance was made.

“A. In February or March, 1941.

Q. No. 8. If your answer to question number six is that you did make a conveyance to Kaname Fujino, your son, state whether or not the conveyance was made for a monetary consideration to you?

“A. Conveyance was made without consideration.”

Mr. Jansen: Of course, the same objection as to the previous question, number six, with regard to the variation of a written contract, I assume it would stand as to all testimony with regard to that.

The Court: Yes.

Mr. Beebe (Reading from a document):

“Q. No. 9. If your answer to the foregoing is that there was no monetary consideration, state whether or not the conveyance was by way of absolute gift?

“A. The conveyance was by way of gift.

“Q. No. 10. State whether or not you have or ever had attorneys-in-fact acting for you in the Territory of Hawaii? A. Yes.

“Q. No. 11. If your answer is in the affirmative, state the names of such attorney or attorneys-in-fact.

“A. Tokuichi Tsuda and Yasuo Tsutsumi.

“Q. No. 12. State whether or not you executed a power of attorney to your attorneys-in-fact the last time in the early part of 1941?

“A. Yes, in February, 1941.

“Q. No. 13. If your answer to the foregoing is in the affirmative, state the date or approximate date, if you can remember?

“A. February 12, 1941.

“Q. No. 14. State whether or not you authorized your attorneys-in-fact to convey all of your real property holdings in the Territory of Hawaii by way of absolute gift to your son Kaname? A. Yes.

“Q. No. 15. If your answer to the foregoing is in the affirmative, tell us how you gave the authorization?

“A. By writing to Oahu Junk Company and to Seitaro Yamamoto.

“Q. No. 16. State when you first considered the question of conveying the real property to your son Kaname Fujino?”

Mr. Beebe: Yes, the record may so show. That is the understanding. The answer as to 16 is:

“A. Prior to my departure from the Territory of Hawaii in February, 1935. [470]

“Q. No. 17. State whether or not you had any discussion concerning the incorporation of your business in the Territory and the transfer by way of gift of your real property holdings in the Territory of Hawaii with Attorney Robert Kiyochi Murakami? A. Yes.

“Q. No. 18. If your answer is in the affirmative, state when and where such discussion took place?

“A. In Japan when Mr. Murakami was visiting during the spring of 1940.

Q. No. 19. State whether or not you discussed the matter of incorporating your business and the giving of your real property to your son with Seitaro Yamamoto when he was in Japan in 1939? A. Yes.

“Q. No. 20. State whether or not you communicated with the Oahu Junk Company and/or with Seitaro Yamamoto to proceed with the incorporation of your business and the transfer of your real property to Kaname Fujino as a gift? A. Yes.

“Q. No. 21. If your answer to the foregoing is in the affirmative, state the approximate date or dates of such communications?

“A. In August, September or October, 1940.

“Q. No. 22. State whether or not you were advised by [471] the Oahu Junk Company, Seitaro Yamamoto, and/or your Attorneys-in-fact concerning the incorporation of your business and/or the transfer of your real property to your son Kaname Fujino by way of gift?

“A. Yes, by the Oahu Junk Company concerning the incorporation in December, 1940, or January, 1941; also from Seitaro Yamamoto in person when he returned to Japan in April, 1941. With reference to the transfer of the real property to Kaname by way of gift, I knew that this was to be done by receipt of a power of attorney by my attorneys-in-fact. I sent them my power of attorney in February, 1941. I was advised of the conveyance in April, 1941, when Seitaro Yamamoto visited Japan.

“Q. No. 23. If your answer is in the affirmative, give us the substance of the record made to you, by whom, and under what circumstances.”

Mr. Jansen: You refer back to the previous answer on that?

Mr. Beebe: Yes. (Reading from a document.)

“Q. No. 24. State whether or not the incorporation, as far as you know, was carried out in accordance with your instruction and wishes? A. Yes.

“Q. No. 25. State whether or not the execution of the deed of conveyance by your attorneys-in-fact as a gift and [472] without monetary consideration to you was in accordance with your instruction or directions and in accordance with your wishes?”

Mr. Jansen: Well that, if it please the Court, that question I think calls for a conclusion and is subject to the objection that it attempts to vary the terms of a written agreement or written power.

The Court: That is the second time that point has come up in these questions and answers. There was one prior question and answer that covered the same ground. I noted it particularly, as you read it.

Mr. Jansen: Well, he has testified regarding his instructions and directions and his wishes.

The Court: The documents?

Mr. Jansen: The documents are still in evidence, and from them it is for the Court to say whether or not there were instructions, there were wishes—whether or not the documents carry out those wishes.

The Court: Well, that's what caused me to think about it twice, and there was some implication there

that there was some other instruction that was given by this man to his attorneys-in-fact that had not heretofore been referred to in the evidence.

Mr. Beebe: Well, if your Honor please, you have that telegram about transferring to Kaname.

The Court: The stock. Well, let us go on and I want to [473] come back to this point when we are through with this matter. But clearly, as I have heretofore ruled, the documents will speak for themselves and these answers will not vary the terms of the written documents.

Mr. Beebe: Oh, there is no question about that.

Mr. Jansen: With that understanding, yes.

Mr. Beebe: This refers to the conveyance by the attorneys-in-fact, and so forth. All right. And the answer to 25:

“A. Yes.

“Q. No. 26. State whether or not you caused the execution of the deed of conveyance to the lands merely as a temporary subterfuge and a cloak and with the idea of having the real property conveyed to you at a later date? A. No.

“Q. No. 27. State whether or not you had any agreement or understanding with your son Kaname that your son would hold the real property conveyed to him for the use and benefit of yourself? A. No.”

Mr. Jansen: With regard to both questions 26 and 27—I withheld the objection because I think they fit together—the first one is: You caused the

execution of the deed of conveyance to the land as a temporary subterfuge and as a cloak and with the idea of having the property reconveyed to you at a later date; and then: Did you have an agreement that he would [474] hold the property conveyed for the use and benefit of yourself—the questions themselves call for a conclusion of the witness. I think it would be appropriate for Counsel to ask the witness whether he had any other agreement or understanding other than that that has been expressed or stated in the previous testimony. But to say I didn't have a cloaking agreement when he doesn't know what a cloaking agreement is, forming a conclusion as to what a cloaking agreement is, I think calls for conclusion. I would have no objection to Counsel putting these two questions in this form: "Did you have any other agreement or understanding regarding this real property with your son?"

The Court: To which you might agree that he would answer——

Mr. Jansen (Interposing): I would agree that he would answer "No," but of course not by his answer.

Mr. Beebe: Let's look at 28 and see if we can meet it by 28. (Reading from a document.)

"Q. No. 28. State whether or not you intended by the deed of conveyance to your son of the real property to make a full, genuine and complete gift to your son for his own use and benefit?"

Mr. Jansen: Well, then, of course we get the question of intent, which is also conclusion, and to determine from the evidence of what actually occurred and from the documents which are here in evidence. All three of them are subject to the same objection. He said, I had this power of attorney; that I had outstanding; and I told my attorneys-in-fact to [475] execute a deed by writing, and so forth and so on, and I did this and I did that, and then it appears in evidence what was done. Now, the intent of the parties is to be gathered from the actual evidence of what has happened and not from a conclusion of the witness as to what was his intent or whether he had a cloaking agreement or a holding agreement. And I'd say if Counsel wants to rephrase those three questions to say. Did you have any other agreement or understanding other than that which you have testified to?

The Court: What is your reaction to that objection, Mr. Beebe?

Mr. Beebe: May I go back just a moment? In the affirmative defenses, if your Honor please, that were set forth in the answer—and I am speaking offhand as to those affirmative defenses—they set up that this conveyance was a subterfuge, as I recall, or language to that effect; it was not a bona fide transfer. And I think, if your Honor please, that we have the right to put at least question number 28 to the witness, that is, “State whether or no you intended by the deed of conveyance to your son of the real property to make a full, genuine and complete gift to your son for his own

use and benefit." The deed is in evidence. There is also the translation of the telegram from these people here to him. Of course, the language of that telegram does not exactly say give—I have forgotten——

Mr. Jansen (Interposing): Well, the telegram was from [476] here to there.

Mr. Beebe: That's right, the telegram was from here to there, and back came the power of attorney.

Mr. Jansen: The letter of power.

Mr. Beebe: Back came the power of attorney. As far as 26 and 27 are concerned——

Mr. Jansen (Interposing): That's 27, 27 and 28.

Mr. Beebe: ——I feel that we are well within our rights and that the questions propounded are proper questions, at least so far as 28 is concerned, if your Honor please.

Mr. Jansen: Well, let me say this—subject to the objection that it cannot vary the terms of the written instruments in evidence in this case for the Court, I have no objection to the witness answering question number 28. How would that do? Would that take care of it?

Mr. Beebe: I think that is all right.

The Court: Very well, with that understanding question 28 may be asked and answered and the other two are deleted.

Mr. Beebe: Withdrawn. The answer to 28:

“A. Yes, I intended to make a complete gift.”

Mr. Jansen: The last of it I think is not responsive. The question can be answered Yes or No, and I think we ought to limit it to Yes.

Mr. Beebe: That is all right.

The Court: So that the answer to 28 is just plain Yes. [477]

Mr. Jansen: That's right.

Mr. Beebe: Yes.

The Court: And 26 and 27, the questions have been withdrawn.

Mr. Jansen: Yes, your Honor. Now maybe I can inject at this stage that, with regard to questions 29 to 39, inclusive, Counsel had proposed no answers, and I suggested that I would be willing—incidentally, they are with regard to what property Yotaro may or may not own in Japan or some place else than the Territory of Hawaii—and I suggested that I would be willing to admit that he would testify that he had sufficient property to keep himself and his wife comfortably.

Mr. Beebe: That's right. All right.

The Court: Very well.

Mr. Beebe: You can just leave this with Mr. Grain and he can copy the questions.

The Court: Well, that's one answer to all of those questions, 29 to 39 inclusive, or the answer to each?

Mr. Beebe: Just a minute.

Mr. Jansen (Referring to a document): Does he have any property outside of Hawaii? What does he have? Does he have any interests in any ship-

ping? What property or business outside of the Territory? What bank deposit, and so on, outside of the Territory?

Mr. Beebe: Well, let's just let it go this way, with reference to his financial condition he would testify as follows. [478]

Mr. Jansen: That's right.

Mr. Beebe: The answer being——

Mr. Jansen: That he owns sufficient property outside of the Territory of Hawaii within his possession and control to provide for himself and his wife comfortably.

Mr. Beebe: Satisfactory.

The Court: Very well.

Mr. Beebe: Well, 40 and 41, 40 is "Have you any correspondence or telegrams which you received from Oahu Junk Company?" I suppose that we can forget those.

Mr. Jansen: I suggest that we must, because I wanted to rest the case. You are satisfied?

Mr. Beebe: Yes, I am satisfied.

The Court: Very well, with that stipulation now recorded and in effect——

Mr. Jansen (Interposing): There is one other point in the form a rebuttal to the testimony of Yotaro Fujino, which is now before the Court——

The Court: Yes?

Mr. Jansen: ——may I have Mr. Kaname Fujino recalled? The Defendant desires to examine him as an adverse witness under the rules, so that there is no question about that.

KANAME FUJINO

a witness in rebuttal, having previously been sworn, testified as follows: [479]

Cross-Examination

By Mr. Jansen:

Q. Kaname, you know that this book that I am showing you is one of the account books of the business, one of the old books? (Showing a book to the witness.) A. Yes.

Q. Have you seen that before? A. I did.

Q. And the writing under date of January 1, 1944, is that in your handwriting?

A. Yes, it is.

The Court: Excuse me. January what?

Mr. Jansen: January 1, 1944.

Q. Now, this that I am showing you purports to be the account of Chiyono Fujino. Chiyono is your mother? A. Yes.

Q. And it say on the page that I am showing you, "Purchase of stock." A. Yes.

Mr. Beebe: I object to that question, if your Honor please, upon the ground that it is improper cross-examination, if this is cross-examination, and as wholly incompetent, irrelevant and immaterial. If he is called on behalf of the Defendant in support of the Defendant's case——

The Court: He is being recalled as a witness, and being [480] the Plaintiff's witness he is presumed to be an adverse witness. So it would be part

(Testimony of Kaname Fujino.)

of further cross-examination. You raise the point, then, that it is not within the scope of the direct examination?

Mr. Beebe: Yes, your Honor.

Mr. Jansen: Well, I might state what I hope to prove by the testimony of this witness. I hope to prove that with regard to the stock of Chiyono, the wife of Yotaro Fujino, in addition to the stock of the two, three children, Yotaro Fujino apparently transferred the stock to his wife with a note or obligation back for the face amount of the stock in the sum of \$11,800, she receiving the 118 shares at that time; and that the same pledge agreement that was in existence with regard to the stock of the children was also inexistence with regard to the stock of Chiyono.

The Witness: That I am not——

The Court: Just a minute. There is no question before you.

Mr. Beebe: I still fail to see the materiality of it so far as Chiyono is concerned, and particularly so far as the Plaintiff is concerned. I think it is clearly, then, improper cross-examination, if your Honor please, not having been touched on, as I recall, in the direct examination.

The Court: I am not too positive, without reviewing my notes, that this witness testified as to the stock set-up [481] Tsuda or Tsutsumi may have. Any of that that has been brought out, that the stock was distributed in a certain way—that being in the picture, it would seem to be in order to cross-

(Testimony of Kaname Fujino.)

examine how much they paid for it or who paid for it. That phase was covered with respect to this witness and the two sisters.

Mr. Beebe: There was in the record, as I recall, evidence to the effect that he got a certain number of shares of stock, that he executed a note for twenty thousand dollars, that the girls each got a certain number of shares. I have forgotten whether it was 118 or something of that kind. And that they executed a note also. But the materiality of this I frankly cannot see, if your Honor please.

The Court: Well, the other two principal stockholders in the corporation, as I get the picture, other than the nominal stockholders who hold a share or two in order to be directors, would be the Plaintiff's father and the Plaintiff's mother.

Mr. Beebe: That is correct.

The Court: So that in relation to the entire picture, I think that an inquiry as to whether the mother paid for her stock or how she paid for it is proper, and preserving your exceptions to the ruling the questions along that line may be put.

Mr. Beebe: All right, exception.

Q. (By Mr. Jansen): This account shows a balance due from your mother [482] of \$11,800. That is the amount of the stock that she received at the time of the incorporation, is it not, the face amount?

A. Yes, I believe, but that is not my handwriting—somebody else.

(Testimony of Kaname Fujino.)

Q. I realize the first part is not your writing.

A. Yes.

Q. But the second part is your writing?

A. At that time the bookkeeper went away, so I just brought it down and that's about all. After that I didn't enter anything.

Q. I see.

The Court: Excuse me. Which is the Plaintiff's writing and which is someone else's?

Q. From here (indicating in a book), 1944 underneath, January 1, 1944, balance \$11,800, is in your writing? A. Yes.

The Court: But the previous entry, December, 1940?

Q. December 1, 1940, the previous entry, is not in your writing? A. No.

The Court: And this in red here (indicating), December 31, 1943, whose writing is that?

The Witness: I put it just to bring it.

The Court: That is your writing, too?

The Witness: Yes.

Q. And what is the purpose of the item over here under [483] credit of \$11,800?

A. Just to bring it forward.

Q. To bring it forward? A. Yes.

Q. Oh, I see. That's a credit against the earlier, December 1, 1940? A. Yes.

Q. So the book, as it stands now, shows a balance of \$11,800? A. Yes.

Q. And that represents?

A. I don't know how this came out.

(Testimony of Kaname Fujino.)

Q. You don't know how it came about but from the face of the record it appears to represent the purchase price of the stock that was issued to your mother, does it not?

A. Yes, that's what it says.

The Court: Let me see if I get this. That is taken to mean that your mother owes \$11,800 to somebody?

Mr. Jansen: These are Yotaro's books, are they?

The Witness: Yes.

Mr. Jansen: These are Yotaro's books.

The Court: And owes that amount of money, then, to your father for the purchase of some stock?

The Witness: Yes.

The Court: Any indication as to what stock that relates to? [484]

Q. That relates to the Oahu Junk Company, does it not? A. Yes.

Mr. Jansen: All right.

The Court: Any questions?

Mr. Beebe: No.

Q. (By Mr. Jansen): Did you know of your own knowledge whether or not any note was given from your mother to your father for that account?

A. No.

Q. Or whether there was any other understanding other than what appears on the books?

A. No.

Q. You don't know anything about that?

A. No.

(Testimony of Kaname Fujino.)

Mr. Jansen: All right. Thank you.

Mr. Beebe: That's all. Thank you.

The Court: All right.

(Witness excused.)

Mr. Beebe: We rest.

The Court: Very well, the case stands submitted. Have we discussed—I'm sure we haven't, it must have been other cases—discussed whether you wish to argue this or file briefs?

Mr. Jansen: We would like to file briefs [485]

Mr. Beebe: Yes.

Mr. Jansen: We asked the Court for time until December 20th to file briefs in another case, and I see no reason why we couldn't work on this brief at the same time and at least get it in by the 25th of December.

The Court: I don't think we will be open for filing that day.

Mr. Jansen: Let's say the 24th.

Mr. Beebe: How do you propose to do it? You file the opening brief?

Mr. Jansen: I don't mind.

Mr. Beebe: That's all right, your Honor. Any time you want is all right with me, providing we are given, say, 20 days after the receipt.

Mr. Jansen: May I suggest until the 24th of December for us, and then 30 days after that for you, and, say, 15 days after that for reply?

Mr. Beebe: O.K.

The Court: All right. The Government is going to file the first brief, which will be filed on or before December 24th.

Mr. Jansen: Yes, sir.

The Court: That means filed here in the Clerk's office.

Mr. Jansen: Yes, sir, with——

The Court: With copies to the other side.

Mr. Jansen: Yes, sir. [486]

The Court: The Plaintiff may then file a brief on or before January 24th, and if the Government wishes to reply to the Plaintiff's brief it may have 15 days subsequent. Receipt or filing?

Mr. Jansen: Well, receipt.

The Court: By you in Washington or by the United States Attorney?

Mr. Jansen: Well, let's make it by the United States Attorney and make it 20 days after receipt by the United States Attorney.

Mr. Beebe: That's satisfactory.

The Court: Twenty days after receipt by the United States Attorney.

Mr. Jansen: That will give five days to give it to us.

The Court: That little point is one we didn't cover in the other arrangement with Mr.——

Mr. Jansen: Mr. Thayer and Mr. Dawson.

The Court: Perhaps you had better, if you want to consider this Washington mail angle, perhaps you had better speak to them as to whether they are in agreement.

Mr. Jansen: All right. Now I might point out that I had authority from Washington to order a transcript of the testimony in this case, as well as the other one, and I have asked the Clerk to proceed with preparing a transcript. That is one of the reasons why I asked for time until the 24th of December [487] when to file a brief. Do you want a copy of the transcript?

Mr. Beebe: Oh, yes. I thought we had agreed on that at the time you spoke to me before.

Mr. Jansen: Oh, yes. I thought we had but I thought we'd better make sure.

The Court: All right. The case, then, stands submitted, and subsequent to receiving your briefs will be decided.

(The Court adjourned at 2:15 o'clock p.m.)

I, Albert Grain, Official Court Reporter, United States District Court, Honolulu, T. H., do hereby certify as follows: That the foregoing is a true and correct transcript of testimony in Civil 704, Kaname Fujino vs. Tom C. Clark; that same was recorded on November 15, 1946, in the above-named court, Hon. J. Frank McLaughlin presiding; and that same was transcribed by me from my stenographic notes of said case.

/s/ ALBERT GRAIN.

December 18, 1946.

From the Minutes of the United States District
Court for the District of Hawaii

Thursday, October 31, 1946

[Title of District Court and Cause.]

On this day came the plaintiff herein with Mr. E. H. Beebe of the firm Smith, Wild, Beebe & Cades, his counsel, and also came Mr. George W. Jansen, chief trial attorney, Department of Justice, counsel for the defendant herein. This case was called for trial.

Motion by Mr. Jansen that the name of Tom C. Clark, Attorney General of the United States as successor to the Alien Property Custodian be substituted as defendant in this cause was granted by the Court.

Mr. Robert H. Murakami, an attorney-at-law, was called and sworn and testified on behalf of the plaintiff.

Copy of Power of Attorney executed by Yotaro Fujino on February 12, 1935, appointing Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact was admitted in evidence as Plaintiff's Exhibit "A," marked and ordered filed.

Copy of Power of Attorney executed by Yotaro Fujino on February 12, 1935, appointing Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact was admitted in evidence as Plaintiff's Exhibit "B," marked and ordered filed.

Copy of Power of Attorney executed by Chiyono Fujino on February 12, 1935, appointing Tokuichi Tsuda and Yasuo Tsutsumi as her attorneys-in-

fact was admitted in evidence as Plaintiff's Exhibit "C," and marked and ordered filed.

Copy of Articles of Association of Oahu Junk Company, Limited, dated November 27, 1940, was admitted in evidence as Plaintiff's Exhibit "D," marked and ordered filed.

Copy of Power of Attorney executed by Yotaro Fujino, also known as Yootaro Fujino on December 23, 1940, appointing Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact was admitted in evidence as Plaintiff's Exhibit "E," marked and ordered filed. [490]

Copy of Power of Attorney executed by Chiyono Fujino on December 23, 1940, appointing Tokuichi Tsuda and Yasuo Tsutsumi as her attorneys-in-fact was admitted in evidence as Plaintiff's Exhibit "F," marked and ordered filed.

Copy of Mortgage dated March 13, 1941 from Yotaro Fujino and Chiyono Fujino to the Bishop National Bank of Hawaii for \$15,000.00 was admitted in evidence as Plaintiff's Exhibit "G," marked and ordered filed.

Copy of Deed from Yotaro Fujino to Kaname Fujino dated March 21, 1941 was admitted in evidence as Plaintiff's Exhibit "H," marked and ordered filed.

Drawing covering Parcels 1, 2, 3, and 4 was admitted in evidence as Defendant's Exhibit No. 1, marked and ordered filed.

Drawing covering Parcel 5 was admitted in evidence as Defendant's Exhibit No. 2, marked and ordered filed.

Drawing covering Parcel 6 was admitted in evidence as Defendant's Exhibit No. 3, marked and ordered filed.

Bill of Sale covering the sale of Yotaro Fujino's interest in the Oahu Junk Company and Oahu Lumber & Hardware Company to the Oahu Junk Company was admitted in evidence as Defendant's Exhibit No. 4, marked and ordered filed.

At 12:00 the Court ordered a recess until 1:30 p.m., this day.

At 1:30 p.m., Mr. Robert Murakami resumed the witness stand.

Copy of Power of Attorney executed by Kaname Fujino on December 12, 1940 appointing Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact was admitted in evidence as Plaintiff's Exhibit "I," marked and ordered filed.

Mr. Kaname Fujino, the plaintiff herein, was called and sworn and testified on his own behalf.

Certificate of Expatriation of Kaname Fujino from Japan on January 19, 1939, dated December 2, 1941 was admitted in evidence as Plaintiff's Exhibit "J," marked and ordered filed.

Promissory note of Kaname Fujino dated March 13, 1941 with the Bishop National Bank of Hawaii for \$15,000.00 was admitted in evidence as Plaintiff's Exhibit "K," marked and ordered filed.

Five page letter in Japanese characters, dated January 31, 1941, was admitted in evidence as Plaintiff's Exhibit "L," marked and ordered filed.

At 3:30 p.m., the Court ordered that this case be continued to Monday, November 4, 1946 at 2 p.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

Wednesday, November 6, 1946

[Title of District Court and Cause.]

On this day came the plaintiff herein with Mr. E. H. Beebe of the firm Smith, Wild, Beebe & Cades, his counsel, and also came Mr. George W. Jansen, chief trial attorney, Department of Justice, counsel for the defendant herein. This case was called for further trial.

Mr. Kaname Fujino resumed the witness stand on direct examination.

Translation of the letter marked as plaintiff's Exhibit "L" was admitted in evidence as Plaintiff's Exhibit "L-1," marked and ordered filed.

One page letter in Japanese characters and the translation thereof were admitted in evidence as Plaintiff's Exhibits "M," and "M-1," respectively, marked and ordered filed.

Copy of United States Gift Tax Return for the calendar year 1941 in the name of Yotaro Fujino and cancelled check dated March 16, 1942, payable to the Collector of Internal Revenue in the sum of \$779.63 were admitted in evidence as Plaintiff's Exhibits "N," and "N-1," respectively, marked and ordered filed.

Three page letter in Japanese characters, dated February 19, 1941, and the translation thereof were admitted in evidence as Defendant's Exhibits Nos. 5 and 5-A, respectively, marked and ordered filed.

Bishop National Bank of Hawaii pass book showing account of Riche K. Fujino was admitted in

evidence as Defendant's Exhibit No. 6, marked and ordered filed.

Copy of cablegram dated September 22, 1941, Fujino to Oahu Junk was admitted in evidence as Plaintiff's Exhibit "O," marked and ordered filed.

Mr. Tokuichi Tsuda, manager, Oahu Junk Company, was called and sworn and testified on behalf of the plaintiff.

At 4:08 p.m., the Court ordered that this case be continued to November 7, 1946, at 10 a.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

Thursday, November 7, 1946

[Title of District Court and Cause.]

On this day came the plaintiff herein with Mr. E. H. Beebe of the firm Smith, Wild, Beebe & Cades, his counsel, and also came Mr. George W. Jansen, chief trial attorney, Department of Justice, counsel for the defendant herein. This case was called for further trial.

Mr. Tokuichi Tsuda resumed the witness stand on cross-examination.

Copy of the Minutes of the Board of Directors of Oahu Junk Company under date of June 8, 1942 was admitted in evidence as Plaintiff's Exhibit "P," marked and ordered filed.

Mr. Robert S. Murakami was recalled to the witness stand by the plaintiff and testified further.

Copy of letter in Japanese characters, dated June 30, 1941, Fujino to Oahu Junk Company, and the translation thereof were admitted in evidence as Defendant's Exhibits Nos. 7 and 7-A, respectively, marked and ordered filed.

Radiogram in Japanese words, dated March 23, 1941, Fujino to Oahu Junk Company, and the translation thereof were admitted in evidence as Defendant's Exhibits Nos. 8 and 8-A, respectively, marked and ordered filed.

Copy of radiogram, dated March 21, 1941, Butler to L. C. Bemkumi, was admitted in evidence as Plaintiff's Exhibit "Q," marked and ordered filed.

Copy of radiogram, dated March 24, 1941, Murakami to Reltub, was admitted in evidence as Plaintiff's Exhibit "R," marked and ordered filed.

It was stipulated by respective counsel as to the evidence of Harry Edmondson if he were called as a witness in this case.

Mr. Harry Y. Tsutsumi, Assistant Manager, Oahu Junk Company, was called and sworn and testified on behalf of the plaintiff.

Translation of a portion of a letter in Japanese characters dated March 24, 1941, was admitted in evidence as Defendant's Exhibit No. 9, marked and ordered filed.

Copy of a Deed of Transfer of certain property to Kaname Fujino from Chiyono Fujino dated December 12, 1934 was admitted in evidence as Plaintiff's Exhibit "S," marked and ordered filed.

At 3:07 p.m., the Court ordered that this case be continued to November 8, 1946 at 9 a.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

Friday, November 8, 1946

[Title of District Court and Cause.]

On this day came the plaintiff herein with Mr. E. H. Beebe of the firm Smith, Wild, Beebe & Cades, his counsel, and also came Mr. George W. Jansen, chief trial attorney, Department of Justice, counsel for the defendant herein. This case was called for further trial.

Mr. Tokuichi Tsuda was recalled to the witness stand and testified further.

Mr. Mayo Yamamoto was called and sworn and testified on behalf of the plaintiff.

At 10:12 a.m., the Court ordered that this case be continued to 1:30 p.m., this day for further trial.

At 1:45 p.m., a letter dated December 5, 1940 from Smith, Wild, Beebe & Cades to Bishop National Bank of Hawaii, relative to Yotaro Fujino's mortgage, was read into the record by Mr. Beebe.

At 2:15 p.m., the Court ordered that this case be continued to November 15, 1946 at 9 a.m. for the purpose of agreeing upon the evidence of Yotaro Fujino if he were called as a witness in this case.

From the Minutes of the United States District
Court for the District of Hawaii

Friday, November 15, 1946

[Title of District Court and Cause.]

On this day came Mr. E. H. Beebe of the firm Smith, Wild, Beebe & Cades, counsel for the plaintiff herein, and also came Mr. George F. Jansen, chief trial attorney, Department of Justice, counsel for the defendant herein. This case was called for the purpose of introducing the evidence of Yotaro Fujino by way of stipulation if he were called as a witness.

Certain questions and answer were read into the record by Mr. Beebe.

Mr. Kaname Fujino was recalled and examined by Mr. Jansen in regard to a ledger account of Chiyono Fujino relative to the purchase of stock.

The Court then ordered that briefs be submitted herein and allowed respondent up to December 24, 1946 within which to file opening brief, up to January 24, 1947 for petitioner's brief, and twenty days after the receipt of the reply brief for respondent's closing brief. [498]

[Title of District Court and Cause.]

APPEARANCE

To the Clerk of the United States District Court
for the Territory of Hawaii:

Please enter the appearance of the undersigned
as attorney for Kaname Fujino, plaintiff in the
above cause.

Dated: Honolulu, Hawaii, August 30, 1947.

/s/ GARNER ANTHONY.

[Endorsed]: Filed Aug. 30, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT
COURT OF APPEALS UNDER RULE 73(b)

Notice is hereby given that Kaname Fujino,
plaintiff above named, hereby appeals to the Circuit
Court of Appeals for the Ninth Circuit from the
final judgment entered in this action on June 5,
1947.

Dated: Honolulu, Hawaii, August 30, 1947.

/s/ GARNER ANTHONY,

Attorney for Kaname Fujino, 312 Castle & Cooke
Building, Honolulu, Hawaii.

[Endorsed]: Filed Aug. 30, 1947.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Appellant hereby designates the entire record proceedings and evidence together with all exhibits to be contained in the record on appeal except the following exhibits being writings in Japanese characters, viz., Defendant's Exhibit 5, Defendant's Exhibit 7, Defendant's Exhibit 8, Plaintiff's Exhibit L and Plaintiff's Exhibit M, and to include in said record on appeal the notice of appeal filed August 30, 1947, this designation, order enlarging time to docket and file record on appeal, and clerk's certificate to transcript of record on appeal.

Dated: Honolulu, Hawaii, September 30, 1947.

/s/ GARNER ANTHONY,
312 Castle & Cooke Building, Honolulu, Hawaii,
Counsel for Kaname Fujino.

Receipt of a copy acknowledged this 1st day of
October, 1947.

RAY J. O'BRIEN,
U. S. Attorney,

By /s/ MAURICE SAPIENZA,
Assistant U. S. Attorney.

[Endorsed]: Filed Oct. 2, 1947.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents :

That we, Kaname Fujino as principal and Mitsugi Maneki and Tadashi Fujieki of Honolulu, Territory of Hawaii, as sureties, are held and firmly bound unto Tom C. Clark, defendant-appellee, in the penal sum of \$250 for the payment of which, well and truly to be made to the said Tom C. Clark, the said Kaname Fujino as principal and Mitsugi Maneki and Tadashi Fujieki as sureties by these presents do bind themselves, their respective heirs, executors and assigns, jointly and severally, and firmly by these presents. The condition of this obligation is such that whereas the above bounden principal has filed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered in the above entitled cause by the United States District Court for the Territory of Hawaii; [506]

Now, Therefore, if the said principal shall prosecute his appeal with effect and pay all costs if he fails to sustain said appeal then this obligation shall be void, otherwise it shall remain in full force and effect.

In Witness Whereof, the said Kaname Fujino and the said Mitsugi Maneki and Tadashi Fujieki

have hereunto set their hands this 30th day of September, 1947.

/s/ KANAME FUJINO,

Principal.

/s/ MITSUGI MANEKI,

/s/ TADASHI FUJIEKI,

Sureties.

AFFIDAVIT OF SURETIES

Territory of Hawaii,

City and County of Honolulu—ss.

Mitsugi Maneki and Tadashi Fujieki, being first duly sworn, each for himself and not for the other, under oath deposes and says: That they are sureties on the foregoing bond; that they are residents of Honolulu, Territory of Hawaii and have property situated within said territory subject to execution and that they are worth in such property more than double the amount of the penalty specified in said bond over and above all their just debts and liabilities and property exempt from execution.

/s/ MITSUGI MANEKI

/s/ TADASHI FUJIEKI

Subscribed and sworn to before me this 30th day of September, 1947.

[Seal] /s/ CHARLES Y. AWANA,
Notary Public, First Judicial Circuit, Territory
of Hawaii.

My commission expires June 30, 1949.

[Endorsed]: Filed Oct. 2, 1947.

[Title of District Court and Cause.]

ORDER ENLARGING TIME TO DOCKET
RECORD ON APPEAL

It is hereby ordered that the time for filing and docketing the record on appeal in the above cause is hereby extended to November 29, 1947.

Dated: Honolulu, Hawaii, October 2nd, 1947.

/s/ D. E. METZGER,
District Judge.

[Endorsed]: Filed Oct. 2, 1947. [510]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 510, inclusive, are a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and that the costs of the foregoing transcript of record are \$55.60 and that said amount has been paid to me by the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of November, 1947.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District
Court, District of Hawaii.

DEFENDANT'S EXHIBIT No. 4

This indenture, made this 2nd day of December, 1940, by and between Yotaro Fujino, heretofore doing business under the trade names of Oahu Junk Company and Oahu Lumber and Hardware Company, hereinafter called the party of the first part, and Oahu Junk Company, Ltd., a Hawaiian corporation, hereinafter called the party of the second part,

Witnesseth That: Whereas, the party of the first part is desirous of transferring to the party of the second part all of his business and assets, except certain items hereinafter mentioned, in exchange for 790 shares of capital stock of the party of the second part of the par value of \$100.00 each; and

Whereas, the party of the second part is desirous of accepting such transfer and assuming the liabilities of the party of the first part in connection with his business aforesaid for the consideration above mentioned;

Now, therefore, this indenture witnesseth: That the party of the first part, in consideration of the premises and the issuance to him of 790 shares of capital stock in the party of the second part, does hereby sell, assign, transfer and set over unto the party of the second part, its successors and assigns, all of his right, title and interest, as of December 1, 1940, in and to that certain business heretofore conducted by the party of the first part at 1217 North King Street, Honolulu, T. H., under the trade names of Oahu Junk Company and Oahu Lumber and Hardware Company, including all cash on hand and in bank, furniture, fixtures, machinery, equipment, automobiles, stock in trade, accounts receivable and the good will of said business; but excepting therefrom loans made by the party of the first part to employees which, as of November 30, 1940, amounted to \$12,513.96.

To have and to hold the same unto the said party of the second part, its successors and assigns, forever; subject, however, to all debts and liabilities of the party of the first part in connection with the operation of said business and which were outstanding as of December 1, 1940.

And for the consideration aforesaid, the party of the second part does hereby accept said transfer of the business and assets from the party of the first part and does hereby covenant and agree with the party of the first part and will all creditors of said party of the first part that it will assume and pay all of said debts and liabilities.

And the party of the second part does hereby agree with the party of the first part that it will forthwith take steps to increase its capital stock and will issue to the party of the first part, or his order, 790 fully paid up shares of its capital stock.

And this indenture further witnesseth: That the party of the first part shall be responsible and liable for all income taxes which may be due and payable for or in connection with the profits of the business made or earned for the current year and up to the date of transfer of said business, and that as between the parties hereto the party of the second part shall not be responsible for profits made or earned prior to the 1st day of December, 1940.

In witness whereof, the parties hereto have executed these presents in duplicate the day and year first above written.

YOTARO FUJINO,

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

His Attorneys-in-Fact.

OAHU JUNK COMPANY, Ltd.

By /s/ TOKUICHI TSUDA,

Its Vice-President

By /s/ YASUO TSUTSUMI,

Its Treasurer.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 5th day of December, 1940, before me personally appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the attorneys-in-fact of Yotaro Fujino duly appointed under power of attorney dated February 12, 1935, and recorded in the Bureau of Conveyances at Honolulu, T. H., in Liber 1357, Pages 73-74; and that the foregoing instrument was executed in the name and behalf of said Yotaro Fujino by said Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Yotaro Fujino;

And on this 5th day of December, 1940, before me appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the Vice-President and Treasurer, respectively, of Oahu Junk Company, Ltd., a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged the instrument to be the free act and deed of said corporation.

[Seal] /s/ ERNEST N. NURAKAMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Liabilities and Capital		Liabilities Assumed by Corporation Dec. 1, 1940
Accounts Payable		\$ 25,617.47
Temporary Deposit Accounts.....		32,929.88
Notes Payable:		
Bishop National Bank of Hawaii:		
Secured by mortgage on real estate at 1217 N. King St.....		\$ 1,500.00
Unsecured-Renewable	8,500.00	
Unsecured-Renewable	10,000.00	
		<hr/>
	\$20,000.00	
Others-Unsecured	10,000.00	30,000.00
		<hr/>
Total Liabilities		\$ 88,547.35
Capital:		
Capital Stock		80,000.00
		<hr/>
Total Liabilities and Capital		\$168,547.35
		<hr/> <hr/>

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

DEFENDANT'S EXHIBIT No. 5-A

Yotaro Fujino
No. 19, 3-Chome
Denenchofu
Amori-ku, Japan
Telephone—Denenchofu 2474

February 19, 1941

Messrs. Oahu Junk Company

Gentlemen:

How have you all been since I wrote to you last?
As we are all well please do not worry about us.

Re: Scrap Rubber

Pertaining to pending negotiations for increased February shipment of scrap rubber, I received your cablegram dated February 13 as follows: "We are able to load eight additional American tons of Peeling and one additional American ton of Black Tube, February shipment. May we do so on Kama-kura? Reply at once." I immediately asked Mitsui but the request (to accept delivery of additional shipment of scrap rubber) was refused on the ground that February shipments had already been allotted. Furthermore, I was told that March shipments had likewise been allotted. And because of the very low exchange balance I was asked to round up between 30 to 40 tons for April shipment. I thought that under the present strained relation between Japan and the United States it was proper (for the Japanese government) to per-

mit the early shipment of at least a portion of the cargo which had already been assembled. I made repeated requests (to this effect), but without success. I believe that it is a very insincere method of doing things but there is nothing that could be done about it. I presume that you already know about this from our wire of February fifteenth, reading as follows: "Additional shipment of scrap rubber impossible; please ship quantity contracted. At present there is no prospect of loading cement in March."

Re: Cement

With reference to cement, I told you by previous correspondence that Mitsui had informed me that although there was no February allotment there would be some for March and that it would be advisable to ship out a large quantity then. Accordingly, I had informed you by wire. Recently, however, I was surprised to learn that there would be no allotment of cement shipments to foreign countries in March. So I notified you, as first above stated, by my wire dated February fifteenth. Please understand the circumstances. Influenced by the rapidly changing condition of the world at present, the trade condition is very unsettled and we are troubled with the constant disruption of the cement export trade. Needless to say that there is home consumption and the demand (for cement) for the various area, concerning which we cannot write in letters, makes it impossible to predict any

trend. So I feel that it is good policy to have shipped to you as much as possible, even to the extent of overdoing it a little, when it can be shipped out.

The sending of the previous cablegram to you was not my idea alone; I had discussed the matter thoroughly with Mr. Hasegawa of Mitsui Bussan. However, I regret to see such a result. We can't help it, so please understand the circumstances.

YOTARO FUJINO

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

DEFENDANT'S EXHIBIT No. 7-A

No. 19, 3 chome, Dencn Cho
bu Omori ku, Tokyo City
Yotaro Fujino

June 30, 1941

Messrs. Oahu Junk Co., Ltd.

I am glad to know that everybody is well. Fortunately we are all well so please feel at ease. I read with thanks the financial report and others up to December 31st of last year, recently sent to me, of my private enterprise which was later incorporated. You may be busy but will you please let me know as in the past years the monthly business condition each month to the necessary extent on the formerly printed form.

Please excuse my haste writing. In closing I pray good health of you all.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

DEFENDANT'S EXHIBIT 8-A

March 23, 1941.

The last user of the new iron was Sinko Aircraft Kogyosha, 291 Azukizawa, Shimura, Itabashi-ke, usage it for repairing of Factory warehouse.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

DEFENDANT'S EXHIBIT No. 9

March 24, 1941

Second page of letter dated March 24, 1941,
re: New Iron

Referring to application for export permit of new iron which you had been handling for our interest we received your wire dated March 21 concerning "Inform us name, address, usage of the last user of new iron necessary in application for export permit."

In compliance with your request I inquired Mitsui and was informed, user, Shinko Aircraft Factory, 291 Shozusawa, Shimura, Itabashi Ku, Tokyo City, usage, for repairs of shop and warehouse of the said factory. Therefore we cabled on March 24 "the last user of new iron is Shinko Aircraft Factory, 291 Shozusawa, Shimura, Itabashi ku usage for repairing shop warehouse." We presume you already have been acquainted with the matter from the wire.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "A"

Know All Men by These Presents:

That I, Yutaro Fujino, doing business as Oahu Junk Company in Honolulu, City and County of Honolulu, Territory of Hawaii, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Tokuichi Tsuda and Yasuo Tsutsumi, both of Honolulu aforesaid, my true and lawful attorneys-in-fact, jointly, for me and in my name, place and stead and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by actions at law or in equity, attachments, or otherwise, and to compromise and agree for the same, and grant acquittances or other sufficient discharges for the same, for me, and in my name to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements and hereditaments and accept the seisin and possession of all lands and all deeds and other assurances in the law therefor; to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate my lands or interests in lands, tenements and hereditaments, upon such terms and conditions, and under such covenants, as they shall

think fit; to vote at all meetings of any company or companies and otherwise to act as my representatives in respect of any shares now held or which may hereafter be acquired by me therein and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf; also to bargain and agree for, buy, sell, mortgage and hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property, in possession or in action, and to make, do and transact all and every kind of business of what nature and kind soever; and also for me and in my name and as my act and deed to sign, seal, execute, [Liber 1357, Page 73] deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, release of curtesy, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, checks, notes, receipts, evidences of debt, releases and satisfaction of mortgages, judgments and other debts and such other instruments in writing of whatever kind or nature as may be necessary or proper in the premises.

Giving and Granting unto my said attorneys, jointly, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises,

as fully to all intents and purposes as I might or could do if personally present with full power of substitution and revocation; and hereby Ratifying and Confirming all that my said attorneys, jointly, shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal on this 12th day of February, A. D. 1935, at Honolulu aforesaid.

[Seal] /s/ YOTARO FUJINO

Territory of Hawaii,
City and County of Honolulu—ss.

On this 12th day of February, A. D. 1935, before me personally appeared Yotaro Fujino, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] s/ R. K. MURAKAMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Entered of Record this 5th day of October, A. D. 1936, at 1:07 o'clock p.m. and compared. Mark N. Huckestein, Registrar of Conveyances. By, Clerk.

[Liber 1357, Page 74]

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "B"

Know All Men by These Presents:

That, I, Yootaro Fujino, doing business under the Trade Name of Oahu Junk Company at 1217 North King Street, Honolulu, City and County of Honolulu, Territory of Hawaii, and in every other capacity, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Tokuichi Tsuda and Yasuo Tsutsumi, both of Honolulu aforesaid, my true and lawful attorneys-in-fact, jointly, for me and in my name, place and stead and for my use and benefit, to do all or any of the following acts and things that is to say: to make, do and transact my said business owned and operated by me under the Trade Name of Oahu Junk Company, and also all and every other kind of business of what nature and kind soever, whether in connection with said Oahu Junk Company or otherwise in my own name independently of said Oahu Junk Company; to bargain and agree for, buy, sell, mortgage and hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property, in possession or in action; to transact my business with the Bishop National Bank of Hawaii at Honolulu, Bishop and King Streets, Honolulu, City and County of Honolulu, Territory of Hawaii; to draw checks on said bank; to endorse checks, promissory notes, drafts and bills of exchange for collection or deposit; and to waive

demand, notice and notice of protest of all such writings; to borrow from time to time such sums of money and upon such terms as my said attorneys shall deem proper and expedient, upon the security of any or all of my property, whether real or personal, or otherwise without security, and for such purposes to give, make, execute, sign, seal, acknowledge and deliver, as collateral thereto, mortgages on such property, with the usual power of sale and foreclosure, and such other provisions and covenants [Liber 1270, Page 42] therein as they deem proper, and to give, make, sign and deliver any and all promissory notes and other negotiable instruments or such other writings necessary or proper or convenient in the premises; and to give, execute, make, sign and deliver such guaranty, indemnity or other agreement or undertaking or such other instruments as may be necessary or proper in connection with the carrying on of my said business.

Giving and Granting unto my said attorneys, jointly, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present with full power of substitution and revocation; and hereby Ratifying and Confirming and I hereby covenant to ratify and confirm all that my said attorneys or any substitutes shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal on this 12th day of February, A. D. 1935, at Honolulu aforesaid.

[Seal] /s/ YOOTARO FUJINO

Territory of Hawaii,
City and County of Honolulu—ss.

On this 12th day of February, A. D. 1935, before me personally appeared Yootaro Fujino to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ MALTBIE L. HOLT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Entered of Record this 1st day of March A. D. 1935 at 10:35 o'clock a.m. and compared. Mark N. Huckestein, Registrar of Conveyances. By....., Clerk.

[Liber 1270, Page 43]

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "C"

Know All Men by These Presents:

That I, Chiyono Fujino, doing business under the Trade Name of Oahu Junk Company at 1217 North King Street, Honolulu, City and County of Honolulu, Territory of Hawaii, and in every other capacity, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Tokuichi Tsuda and Yasuo Tsutsumi, both of Honolulu aforesaid, my true and lawful attorneys-in-fact, jointly, for me and in my name, place and stead and for my use and benefit, to do all or any of the following acts and things that is to say: to make, do and transact my said business owned and operated by me under the Trade Name of Oahu Junk Company, and also all and every other kind of business of what nature and kind soever, whether in connection with said Oahu Junk Company or otherwise in my own name independently of said Oahu Junk Company; to bargain and agree for, buy, sell, mortgage and hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property, in possession or in action; to transact my business with the Bishop National Bank of Hawaii at Honolulu, Bishop and King Streets, Honolulu, City and County of Honolulu, Territory of Hawaii; to draw checks on said bank; to endorse checks, promissory notes, drafts and bills of exchange for collection or deposit; and to waive, demand, notice and notice of protest of all such writings; to borrow from time to time such sums of money and upon such terms as my

said attorneys shall deem proper and expedient, upon the security of any or all of my property, whether real or personal, or otherwise without security, and for such purposes to give, make, execute, sign, seal, acknowledge and deliver, as collateral thereto, mortgages on such property, with the usual power of sale and foreclosure, and such other [Liber 1270, Page 44] provisions and covenants therein as they deem proper, and to give, make, sign and deliver any and all promissory notes and other negotiable instruments or such other writings necessary or proper or convenient in the premises; and to give, execute, make, sign and deliver such guaranty, indemnity or other agreement or undertaking or such other instruments as may be necessary or proper in connection with the carrying on of my said business.

Giving and Granting unto my said attorneys, jointly, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present with full power of substitution and revocation; and hereby Ratifying and Confirming and I hereby covenant to ratify and confirm all that my said attorneys or any substitutes shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal on this 12th day of February, A. D. 1935, at Honolulu aforesaid.

[Seal] /s/ CHIYONO FUJINO
(Japanese characters)

Territory of Hawaii,
City and County of Honolulu—ss.

On this 12th day of February, A. D. 1935, before me personally appeared Chiyono Fujino to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

[Seal] /s/ MALTBIE L. HOLT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Entered of Record this 1st day of March A. D. 1935 at 10:36 o'clock a.m. and compared. Mark N. Huckestein, Registrar of Conveyances. By _____, Clerk.

[Liber 1270, Page 45]

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "D"

In the Office of the Treasurer of the
Territory of Hawaii

In the Matter of the Incorporation of Oahu Junk
Company, Ltd.

ARTICLES OF ASSOCIATION

Know All Men by These Presents:

That we, Yotaro Fujino, of Toyko, Japan, Chi-yono Fujino, also of Tokyo, Japan, and Katsue Fujieki, Shizue Maneki, Tokunichi Tsuda, Yasuo Tsutsumi and S. Yamamoto, all of Honolulu, City and County of Honolulu, Territory of Hawaii, desiring to be incorporated as a joint stock company of limited liability in accordance with the laws of the Territory of Hawaii and to obtain the benefits conferred by said laws to and upon corporations, have entered into the following Articles of Association, the terms whereof it is agreed shall be equally binding upon the parties signing this instrument and upon all others who from time to time hereafter may become members of this joint stock company and who may hold stock therein.

I.

The name of the corporation shall be "Oahu Junk Company, Ltd."

II.

The principal office and place of business of this corporation shall be at 1217 North King Street,

Plaintiff's Exhibit "D"—(Continued)

Honolulu, City and County of Honolulu, Territory of Hawaii, or at such other location as may be hereafter decided upon by the Board of Directors.

The corporation shall have power to conduct its business in any part of the United States and in foreign countries; and the corporation may establish branch offices and agencies in any part of the Territory of Hawaii and elsewhere as may be deemed necessary or convenient by the Board of Directors.

III.

The purposes and objects for which this corporation is organized are as follows:

(a) To purchase, acquire, take over, conduct and carry on the business now carried on by Yotaro Fujino under the trade name of Oahu Junk Company and also under the trade name of Oahu Lumber and Hardware Company, and to pay for same in cash, stock of this corporation, or otherwise, and to assume the liabilities of said Yotaro Fujino in connection with said business;

(b) To deal in junk and second-hand goods as well as new merchandise, and also to deal in lumber, building materials, paint and hardware;

(c) To buy, sell, import, export, exchange, manufacture, trade and deal in goods, wares, merchandise, commodity, material and products, of every kind, nature or description;

(d) To act as agent, factor or broker for any individual, firm, partnership or corporation;

Plaintiff's Exhibit "D"—(Continued)

(e) To acquire, buy, sell, take on lease, lease, let, exchange, assign, mortgage, hypothecate and otherwise deal in any property, real, personal or mixed, as may be necessary or convenient in the conducting or maintaining of the business of this corporation or in the exercise of its corporate powers;

(f) To acquire, hold, buy and sell shares of capital stock in other corporations and to exercise all rights, privileges and powers incident to such ownership of stock;

(g) And without limit as to the amount to borrow money, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments and evidences of indebtedness, whether secured by mortgage or otherwise, as well as to secure the same by mortgage, by pledge or by hypothecation of any of its property, or otherwise, so far as may be permitted by the laws of the Territory of Hawaii;

(h) To apply for, obtain, register, lease or otherwise or in any manner acquire, and to hold, use, operate, sell, assign or otherwise dispose of any trade names, trade marks, copyrights, patents, inventions, improvements and processes used in connection with the business of the corporation or secured under letters patent or copyright privileges of the Territory of Hawaii, or of the United States or any other country;

Plaintiff's Exhibit "D"—(Continued)

(i) To acquire, take over and conduct the business, property and liabilities of any person, firm, partnership or corporation carrying on any business which this corporation is authorized to carry on, or possessed or property suitable for any of the purposes of the corporation, and pay for the same in cash or in the stocks, bonds, debentures or other securities of this corporation or otherwise; and in case of any such other corporation to effect such purpose by acquiring, holding and voting a majority of the shares of the capital stock thereof;

(j) To maintain and operate warehouses for the storage of goods, wares and merchandise;

(k) To purchase, hold, cancel and re-issue the shares of its capital stock;

(l) To establish and support, or aid in the establishment and support of associations, institutions and conveniences calculated to benefit any of the employees or ex-employees of the corporation, or the dependents or relatives of such persons, and to grant pensions and allowances, and to make payments towards old-age or other insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object;

(m) To do any or all of the things permitted by the laws of the Territory of Hawaii to the same extent as natural persons might or could do in any part of the world as principal, agent, contractor, trustee or otherwise and either alone or in company with others; and

Plaintiff's Exhibit "D"—(Continued)

(n) To engage in or conduct any other or different business or trade and to do any and all other acts and things necessary, convenient or proper in the exercise of its corporate powers which an individual, firm or copartnership lawfully could do and which corporations are not prohibited by law from doing.

IV.

That the capital stock of the corporation shall be One Thousand Dollars (\$1,000.00) divided into ten (10) shares of the par value of One Hundred Dollars (\$100.00) each, with the option or privilege of increasing and extending the said capital stock from time to time to a sum not exceeding Five Hundred Thousand Dollars (\$500,000.00) and to issue new shares of stock to represent the same. Stock of the corporation shall have such voting powers, restrictions and/or privileges as may be prescribed by the By-Laws.

V.

The officers of the corporation shall be a president, one or more vice-presidents, a secretary, a treasurer and an auditor. The by-laws may provide for the number of vice-presidents, for such other officers or assistants or subordinate officers as may be deemed advisable. The corporation may employ any person or firm who is not a stockholder to audit the corporate books and accounts.

The board of directors of the corporation shall consist of not less than five (5) directors. The exact

Plaintiff's Exhibit "D"—(Continued)

number of directors may be fixed by the by-laws and that until so fixed the number of directors shall be seven (7). The board of directors shall, subject to the limitations contained in the by-laws of the corporation, have and exercise all powers and authority of the corporation and shall have the general management and control of all business, property and affairs of the corporation.

All officers and directors of the corporation shall be elected or appointed as the by-laws shall direct, provided that the officers and directors of the corporation, until their successors are chosen, shall be:

Yotaro Fujino, President and Director.

Tokuichi Tsuda, Vice-President and Director.

Yasuo Tsutsumi, Treasurer and Director.

Shizue Maneki, Secretary and Director.

Kastue Fujieki, Auditor and Director.

Chiyono Fujino, Director.

S. Yamamoto, Director.

VI.

The corporation hereby organized shall be a body corporate under the laws of the Territory of Hawaii, with all the rights, powers and immunities which are now or may hereafter be secured by law to incorporate companies, and shall be subject to all general laws now in force or hereafter to be enacted relating to corporations of like character; it shall

Plaintiff's Exhibit "D"—(Continued)

have succession by its corporate name for the term of fifty (50) years from the date hereof, and shall have power:

(a) To sue and be sued in its corporate name in any Court;

(b) To make and use a common seal and alter the same at its pleasure;

(c) To make and amend by-laws not inconsistent with these Articles of Association or any existing laws for the management of its property and business, the selection and removal of its officers and directors, and the regulation of its affairs, disposal of its property and the transfer of its stock;

(d) To appoint such subordinate officers, boards, committees and agents as the business of the corporation may require, and to remove them at its pleasure; and

(e) To do and perform any and all such other acts, matters and things, not contrary to law, as its business may require.

VII.

No stockholder shall be liable for the debts of the corporation beyond such amount as shall be due and unpaid on the share or shares held by him.

VIII.

This corporation shall have the right to issue certificates of shares of its capital stock on receipt of

Plaintiff's Exhibit "D"—(Continued)

the par value of the same. Dividends, whether cash or otherwise, on such shares may be declared by the Board of Directors in such amounts, at such times and in such form, as the profits of the business and condition of the corporation may justify in the judgment of the Board of Directors.

IX.

Service of legal process upon any of the officers of the corporation, except the Auditor, shall be binding upon the corporation.

In witness whereof, the said parties hereto have hereunto set their hands and seals this 27th day of November, 1940.

YOTARO FUJINO,

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

His Attorneys-in-Fact.

CHIYONO FUJINO,

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

Her Attorneys-in-Fact.

/s/ KATSUE FUJIEKI,

/s/ SHIZUE MANEKI,

/s/ TOKUICHI TSUDA,

/s/ YASUO TSUTSUMI,

/s/ S. YAMAMOTO.

Plaintiff's Exhibit "D"—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss.

On this 27th day of November, 1940, before me personally appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the attorneys-in-fact of Yotaro Fujino duly appointed under power of attorney dated February 12, 1935, recorded in the Bureau of Conveyances at Honolulu, T. H., in Liber 1357, Pages 73-74, and that the foregoing instrument was executed in the name and behalf of said Yotaro Fujino by said Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Yotaro Fujino;

And on this 27th day of November, 1940, before me personally appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the attorneys-in-fact of Chiyono Fujino duly appointed under power of attorney dated February 12, 1935, recorded in the Bureau of Conveyances at Honolulu, T.H., in Liber 1270, Pages 44-45, and that the foregoing instrument was executed in the name and behalf of said Chiyono Fujino by said Tokuichi Tsuda and Yasuo Tsutsumi as her attorneys-in-fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Chiyono Fujino;

Plaintiff's Exhibit "D"—(Continued)

And on this 27th day of November, 1940, before me personally appeared Fatsue Fujieki, Shizue Maneki, Tokuichi Tsuda, Yasuo Tsutsumi and S. Yamamoto, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

[Seal] ERNEST N. MURAKAMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

In the Office of the Treasurer
of the Territory of Hawaii

In the Matter of the Incorporation of Oahu Junk
Company, Ltd.

AFFIDAVIT OF INCORPORATION

Territory of Hawaii,
City and County of Honolulu—ss.

Tokuichi Tsuda, Vice-President, Shizue Maneki, Secretary, and Yasuo Tsutsumi, Treasurer, of the corporation asking to be incorporated under the laws of the Territory of Hawaii under the name of Oahu Junk Company, Ltd., being severally sworn, do hereby depose and say:

1. That the capital stock of the corporation is One Thousand Dollars (\$1,000.00) divided into ten (10) shares of the par value of One Hundred Dol-

Plaintiff's Exhibit "D"—(Continued)

lars (\$100.00) each, with the privilege of increasing said capital stock to the sum of Five Hundred Thousand Dollars (\$500,000.00).

2. That all of the capital stock has been subscribed and paid for in cash as follows:

Names of Subscribers	No. of Shares	Par Value of Shares
Yotaro Fujino	2	\$ 200.00
Chiyono Fujino	1	100.00
Katsue Fujieki	2	200.00
Shizue Maneki	2	200.00
Tokuichi Tsuda	1	100.00
Yasuo Tsutsumi	1	100.00
S. Yamamoto	1	100.00
Total	10	\$1,000.00

3. That there has been paid into the treasury of the corporation on said capital stock subscribed for as aforesaid the sum of One Thousand Dollars (\$1,000.00).

/s/ TOKUICHI TSUDA,
Vice-President.

/s/ SHIZUE MANEKI,
Secretary.

/s/ YASUO TSUTSUMI,
Treasurer.

Subscribed and sworn to before me this 27th day of November, 1940.

[Seal] ERNEST N. MURAKAMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "E"

Office of the Assistant Registrar, Land Court, Territory of Hawaii (Bureau of Conveyances)

Honolulu, Hawaii, Mar 17 1941

The attached instrument is a true copy of Document Number 57281, received for registration in this office, Mar. 17, 1941, at 2:33 o'clock p.m. and noted on Certificate of Title Number 3.

Attest:

[Seal] /s/ OLIVER R. AIU,

Assistant Registrar, Land Court, Territory of Hawaii.

POWER OF ATTORNEY

Know All Men by These Presents:

That I, Yotaro Fujino, also known as Yootaro Fujino, formerly residing in Honolulu, City and County of Honolulu, Territory of Hawaii, but now residing in Tokyo, Japan, do hereby make, constitute and appoint Tokuichi Tsuda and Yasuo Tsutsumi, whose residence and post office address is 1217 North King Street, Honolulu, aforesaid, jointly, my true and lawful attorneys in fact for me and in my name, place and stead and for my use and benefit, to do all or any of the following acts and things, that is to say: To carry on and transact all my business in the Territory of Hawaii; to enter into, perform and carry out, and to rescind, terminate and cancel contracts of all kinds; to buy, take on lease and otherwise ac-

quire, and to hold, sell, mortgage, hypothecate, pledge, lease and otherwise dispose of, and in any and every way and manner deal with real property, leaseholds and other interests in real property, stocks, bonds, goods, wares, merchandise, choses in action and other property and rights of any nature whatsoever in possession or in action; to sign, seal, execute, acknowledge and deliver deeds, bills of sale, contracts, agreements, options, leases and other instruments; to transact my business with Bishop National Bank of Hawaii at Honolulu; to draw checks for the withdrawal of funds from said bank; to endorse checks, promissory notes, drafts, and bills of exchange for collection or deposit; to accept drafts and other negotiable instruments and to receive, endorse and negotiate and deliver bills of lading and other evidences and documents of title to merchandise, stock certificates and other securities; to waive demand, notice and notice of protest of checks, bills, notes and other negotiable instruments; to borrow money from time to time upon such terms and at such rates of interest as my said attorneys shall deem proper and expedient either without security or upon the security of all or any portion or portions of my property whether real, personal or mixed, and to give, make, sign, seal, execute, acknowledge and deliver promissory notes and other obligations, mortgages, pledge agreements, hypothecations and other securities and any such mortgage, pledge agreement or hypothecation may be with such powers of sale and/or foreclosure and

may contain such other provisions, covenants and conditions as my said attorneys may agree to, and to execute all documents and writings of whatsoever kind and nature in connection therewith; to collect, receive, enforce payment and collection of and otherwise reduce to possession, and receipt and give releases and discharges for all sums of money and other kinds of property whatsoever that may be due, payable or belonging to me, or to which I may be entitled to possession of; to remise, release and quitclaim to all my estate, right, title and interest including any curtesy in any property of whatsoever kind and nature; to give, make, sign, seal, execute and deliver such bonds, guaranty, indemnity or other agreements or undertakings as may be necessary or proper or convenient in connection with any of the transactions hereby authorized; and to vote at any and all meetings of stockholders any shares of stock which I may own on any and all questions that may come before such meetings.

And I hereby revoke those two certain powers of attorney heretofore made by me to my said attorneys, both dated February 12, 1935, one signed Yootaro Fujino and recorded in the Bureau of Conveyances at Honolulu in Honolulu aforesaid, in Book 1270, Page 42, and the other signed Yotaro Fujino, recorded in said Bureau in Book 1357, Page 73.

Giving and Granting unto my said attorneys jointly full power and authority to do and perform all and every act and thing whatsoever requisite

and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, and to do any of said acts and things either for me alone and/or jointly with another or others, and with full power of substitution and revocation; and I hereby ratify and confirm, and covenant to ratify and confirm all that my said attorneys or any substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal this 20th day of February, 1941.

(Signed)

[Seal]

YOTARO FUJINO.

Certificate of Acknowledgment
of Execution of Document

Empire of Japan, Prefecture of Tokyo, City of
Tokyo, Consulate General of the United States
of America

I, Charles H. Stephan, Vice Consul of the United States of America at Tokyo, Japan, duly commissioned and qualified, do hereby certify that on this 20th day of February, 1941, before me personally appeared Yotaro Fujino, sometimes known as Yootaro Fujino, to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument, he duly acknowledged to me that he executed the same freely and

voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ CHARLES H. STEPHAN,
Vice Consul of the United
States of America.

Service No. 732

American Consulate General Fee Stamp \$2.00

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "F"

Office of the Assistant Registrar, Land Court, Territory of Hawaii (Bureau of Conveyances)

Honolulu, Hawaii, Mar 17 1941

The attached instrument is a true copy of Document Number 57282, received for registration in this office Mar. 17, 1941, at 2:34 o'clock, p.m., and noted on Certificate of Title Number 3.

Attest:

[Seal] /s/ OLIVER R. AIU,
Assistant Registrar, Land Court, Territory of
Hawaii.

Know All Men by These Presents:

That I, Chiyono Fujino, wife of Yotaro Fujino, alias Yootaro Fujino, of Tokyo, Japan, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Tokuichi Tsuda

and Yasuo Tsutsumi, both of Honolulu, City and County of Honolulu, Territory of Hawaii, my true and lawful attorneys-in-act, jointly, for me and in my name, place and stead and or my use and benefit in the Territory of Hawaii, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by actions at law or in equity, attachments, or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for me, and in my name to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements and hereditaments and accept the seisin and possession of all lands and all deeds and other assurances in the law therefor; to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate my lands or interests in lands, tenements and hereditaments, upon such terms and conditions, and under such covenants, as they shall think fit; to release my dower in all lands, interests in land, tenements and hereditaments either by joining in any deed or mortgage to be made by my said husband or by separate instrument as my said attorneys shall decide; to borrow money either for me alone or jointly with my said husband and to promise and agree to repay the same with interest and upon such terms and at such times and places as my said attorneys shall decide; to vote at all

meetings of any company or companies and otherwise to act as my representatives in respect of any shares now held or which may hereafter be acquired by me therein and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf; to represent me in any and all matters coming before the Bureau of Internal Revenue, Washington, D. C., or any representative thereof, regarding the filing of annual income tax returns or delinquent or amended income tax returns or other returns or reports of whatever nature, including claims for refund or credit, the payment of any and all taxes which may be due and payable and the receiving, indorsing and cashing of all checks received from the Treasury Department, Washington, D. C., or elsewhere, which may apply to the refunding of taxes or otherwise; to make and file such returns or reports as may be required by the Social Security Board and the Bureau of Internal Revenue, Washington, D. C., or which may be required by the Tax Commissioner of the Territory of Hawaii, or any other governmental authority; also to bargain and agree for, buy, sell, mortgage and hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property, in possession or in action, and to make, do and transact all and every kind of business of what nature and kind soever; and also for me and in my name and as my act and deed to sign, seal, execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries,

charter parties, bills of lading, bills, bonds, checks, notes, receipts, evidences of debt, releases and satisfaction of mortgages, judgments and other debts and such other instruments in writing of whatever kind or nature as may be necessary or proper in the premises.

Giving and Granting unto my said attorneys, jointly, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, and hereby ratifying and confirming all that my said attorneys, jointly, shall lawfully do or cause to be done by virtue of these presents.

I hereby declare that this power of attorney shall supersede that certain power of attorney executed by me on the 12th day of February, 1935, recorded in the Office of the Registrar of Conveyances at Honolulu, T.H., in Liber 1270, Pages 44-45, and that by the recording of this power of attorney, said power of attorney dated February 12, 1935, shall become null and void.

In witness whereof, I have hereunto set my hand and seal this 23rd day of December, 1940.

HER SEAL

(Chiyono Fujino in Japanese Characters)

Witness:

/s/ M. O. KASAWA

/s/ K. FUJINO

Certificate of Acknowledgment
of Execution of Document

Empire of Japan, Prefecture of Tokyo, City of
Tokyo, Consulate of the United States of
America.—ss.

I, David Thomasson, Vice Consul of the United
States of America at Tokyo, Japan, duly commis-
sioned and qualified, do hereby certify that on this
23rd day of December, 1940, before me personally
appeared Chiyono Fujino, to me personally known,
and known to me to be the individual described in,
whose name is subscribed to, and who executed the
annexed instrument, and being informed by me of
the contents of said instrument, she duly acknowl-
edged to me that she executed the same freely and
voluntarily for the uses and purposes therein men-
tioned.

In witness whereof, I have hereunto set my hand
and official seal the day and year last above written.

/s/ DAVID THOMASSON,

Vice Consul of the United
States of America.

Service No. 5205

American Consulate General Fee Stamp \$2.00

[Endorsed]: Filed C.C.A. Nov. 3, 1947.

PLAINTIFF'S EXHIBIT "G"

Office of the Assistant Registrar, Land Court, Territory of Hawaii (Bureau of Conveyances)

Honolulu, Hawaii, Mar. 17, 1941.

The attached instrument is a true copy of Document Number 57283, received for registration in this office, Mar. 17, 1941, at 2:35 o'clock p.m., and noted on Certificate of Title Number 17544.

And also recorded in the Bureau of Conveyances in Liber 1626, Pages 166-172.

Attest:—

[Seal] /s/ OLIVER P. AIU,

Assistant Registrar, Land
Court, Territory of Hawaii.

This Indenture, made this 13th day of ~~December, 1940,~~ March, 1941, between Yootaro Fujino (also known as Yotaro Fujino), whose wife's name is Chiyono Fujino, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Mortgagor," and Bishop National Bank of Hawaii at Honolulu, a national banking association, whose principal place of business is corner of King and Bishop Streets, Honolulu aforesaid, and whose post office address in said Honolulu is P. O. Box 3200, hereinafter called the "Mortgagee,"

Witnesseth That:

The Mortgagor, in consideration of the sum of Fifteen Thousand and No/100ths Dollars (\$15,000.00) now paid to him by the Mortgagee, the receipt of which the Mortgagor hereby acknowl-

Plaintiff's Exhibit G—(Continued)

edges, and also in consideration of any and all other sums of money now owing by and/or that may hereafter be advanced or paid to or on account of or become owing by the Mortgagor to the Mortgagee, does hereby grant, bargain, sell and convey unto the Mortgagee and its successors and assigns:

First: All that certain parcel of land (portion of the land described in Royal Patent 688, Land Commission Award 1239, Apana 2, to Pine) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at the South corner of King Street and a land leading to the Former Japanese Hospital, and running as follows:

1. S. 33° 10' E. true 112 feet along King Street;
2. S. 63° W. true 150 feet along remaining portion of Apana 2, R. P. 688 to Pine;
3. N. 23° 35' W. true 102 feet along Japanese Hospital;
4. Thence to the initial point, along land 132.5 feet.

Containing an area of 15,000 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Lam Shee, by deed dated August 3, 1926, and recorded in the Bureau of Conveyances at Honolulu in Book 842, Page 4.

Second: All that certain parcel of land (portion of the land described in Land Commission Award 2222, Apana 3, to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a 1" galvanized iron pipe, at the North corner of this lot and the west corner of

Plaintiff's Exhibit G—(Continued)

Lot No. 3, the coordinates of said point of beginning referred to Government Survey Trig. Station "Punchbowl" being 5142.6 feet north and 7247.2 feet west, and running by true azimuths and distances:

1. 334° 10' 114.8 feet along Lot 3 to a 1" galvanized iron pipe;
2. 62° 19' 107.9 feet along Lot 1 to a 1" galvanized iron pipe;
3. 146° 45' 115.2 feet along fence, along B. P. Bishop Estate to a 1" galvanized iron pipe;
4. 242° 19' 122.8 feet along fence along L.C.A. 1917, Apana 1, to Hiki, to Nieper, to the point of beginning.

Containing an area of 13,234 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Sano Danjo, by deed dated March 1, 1923, and recorded in said Bureau in Book 671, page 319.

Third: All that certain parcel of land (portion of the land described in Royal Patent 2082, Land Commission Award 2222, Apana 3 to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a 1 in. galv. iron pipe, at the North corner of this lot and the East corner of Lot No. 3, the coordinates of aid point of beginning referred to City and County Survey Trig. Station "Punchbowl" being 5045.3' North and 7214.7' West and running by true azimuths and distances:

1. 334° 20' 115.4 feet along fence, along L.C.A. #1239 to Pine, to J. H. Schnack, to a post;
2. 61° 24' 102.4 feet along L.C.A. #4455 Ap. 1 to Kaaloa, to a 1¼" galvanized iron pipe in concrete;

Plaintiff's Exhibit G—(Continued)

3. 146° 45' 117.7 feet along fence, along B. P. Bishop Estate to a 1-in. galvanized iron pipe;
4. 242° 19' 117.9 feet along Lots #2 and #3 to the point of beginning.

Containing an area of 12,810 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Jirokichi Fujiyoshi, by deed dated October 5, 1933, and recorded in said Bureau in Book 1219, page 193.

Fourth: All that certain parcel of land (portion of the land described in Royal Patent 1506, Land Commission Award 2319, Apana 2 to Nawai) adjoining the Kalihi Branch of the Oahu Railway & Land Co.'s 40 foot Right of Way, Southeasterly from Waiakamilo Road at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a pipe at the South corner of this piece of land, on the Northeast side of the Oahu Railway and Land Company's 40 foot Right of Way (Kalihi Branch) the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokauea" being 5541.20 feet South and 1710.02 feet West and running by true azimuths:

1. 146° 07' 60.22 feet along Oahu Railway and Land Company's 40-foot Right of Way (Kalihi Branch) to a pipe in concrete;
2. 155° 40' 63.85 feet along Section "Z" of Land Court Application 750 to a pipe in concrete;
3. 243° 02' 136.70 feet to a pipe in concrete;
4. 325° 00' 168.00 feet along Section "Y" of Land Court Application 750 to a pipe in concrete;
5. 78° 23' 161.62 feet to the point of beginning.

Plaintiff's Exhibit G—(Continued)

Containing an area of 21,224 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Bishop Trust Company, Limited, Trustee, by deed dated January 28, 1933, and recorded in said Bureau in Book 1192, page 464.

Fifth: All that certain parcel of land (portion of the land described in L. C. A. 7714-B, Apana 7 to Moses Kekuaiwa; R. P. 2145 L. C. A. 2319, Part 2, Apana 2 to Nawai) situate at Kapalama, Honolulu aforesaid, and bounded and more particularly described as follows:

Beginning at a point on the Easterly boundary of this piece of land and the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being 4,739.4 feet North, 7,605.9 feet West, and the true azimuth and distance to a 1¼ inch pipe set in concrete monument on the East line of L. C. A. 8515, Apana 1 to Keoni Ana, being 326° 07' 429.00 feet, and running by true azimuths:

1. 81° 25' 20.30 feet along portion of Kapalama owned by the Andrews Estate;
2. 357° 10' 72.00 feet along same;
3. 333° 10' 98.50 feet along same;
4. 69° 15' 69.50 feet along L.C.A. 8515, Apana 1 to Keoni Ana to a pipe in concrete;
5. 151° 00' 96.00 feet along Kapalama to a pipe in concrete;
6. 66° 15' 134.00 feet along same to a pipe in concrete;
7. 161° 10' 62.50 feet along L.C.A. 1730, Apana 2, Kilauea;
8. 228° 00' 50.00 feet along same;
9. 136° 05' 55.00 feet along same;

Plaintiff's Exhibit G—(Continued)

10. 79° 20' 36.00 feet along same;
11. 152° 30' 50.00 feet along L.C.A. 1731, Apana 1, to Kaaua;
12. 241° 30' 52.00 feet along same;
13. 166° 00' 147.00 feet along same;
14. 245° 00' 130.00 feet along L.C.A. 1730, Apana 1, to Kilauea;
15. 326° 07' 283.00 feet along the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way to the point of beginning and containing an area of 1.63 acres, or thereabouts.

Being the land conveyed to the Mortgagor by Watson Ballentyne, by deed dated October 28, 1936, and recorded in said Bureau in Book 1348, page 261.

Sixth: All that certain parcel of land situate at Kapalama, City and County of Honolulu, said Territory, described as follows:

Lot Twenty-five-C (25-C), area 3,028.0 square feet, of Section C, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 750 of the Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, and being all of the land comprised in Transfer Certificate of Title No. 17,544 issued to the Mortgagor.

And the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Mortgagor both at law and in equity, therein and thereto;

To Have and to Hold the same, together with the buildings, improvements, tenements, rights, easements, privileges and appurtenances to the same

Plaintiff's Exhibit G—(Continued)

belonging or appertaining or held and enjoyed therewith, unto the Mortgagee, its successors and assigns forever;

Provided, However, that if the Mortgagor shall pay to the Mortgagee said sum of \$15,000.00, with interest thereon at the rate of six per cent per annum, according to the tenor of that certain promissory note in that amount bearing even date herewith and secured hereby and payable to the order of the Mortgagee in the manner in said promissory note set forth the terms of which said note are incorporated herein by reference and according to the tenor of any renewals thereof, net over and above all taxes levied and assessed upon or in respect of the debt and interest, and shall discharge any and all obligations that now are or hereafter may be or become owing directly or contingently by the Mortgagor to the Mortgagee on any and every account whether or not the same are mature, of which obligations the books of the Mortgagee shall be prima facie evidence and which obligations it is agreed by these presents are and shall be secured as an additional charge against all the property hereby mortgaged, shall observe and perform all the covenants and agreements herein contained and pay the costs of release, Then These Present Shall Be Void.

But Upon Failure to pay said principal or interest when due, or upon the breach of any covenant or agreement hereof in any promissory note or terms of any other obligation hereby secured, then and in either of such events the whole amount of all

Plaintiff's Exhibit G—(Continued)

indebtedness owing by or chargeable to the Mortgagor under any provision of this mortgage or intended to be secured hereby, on any and every account, shall at the option of the Mortgagee, and without notice, at once become due and payable, and with or without foreclosure, the Mortgagee shall have the immediate right to receive and collect all rents, income and profits from the property hereby mortgaged due or accrued or to become due and said rents and profits are hereby assigned to the Mortgagee and said Mortgagee is hereby irrevocably appointed the attorney in fact of the Mortgagor in the name of the Mortgagor or in its own name to demand, sue for, collect, recover and receive all such rents and profits, to compromise and settle claims for rents or profits upon such terms and conditions as to it may seem proper, to enter into, renew or terminate leases or tenancies, and the Mortgagee may foreclose this mortgage by suit in equity with the immediate right to a receivership upon ex parte order and without bond pending foreclosure, or as now provided by law by entry and possession, or (with or without entry and possession) may sell the said property or any part thereof either as a whole or in parcels, together with all improvements that may be upon the property so sold, at public auction, and may in its own name or as the attorney in fact of the Mortgagor, for such purpose hereby irrevocably appointed, effectually convey the property so sold to the purchaser or purchasers absolutely and

Plaintiff's Exhibit G—(Continued)

forever; and any foreclosure shall forever bar the Mortgagor and all persons claiming under the Mortgagor from all right and interest in said property at law and in equity; and out of the proceeds of any foreclosure sale the Mortgagee may deduct all costs and expenses of sale, foreclosure and/or suit including an attorney's fee; may pay and discharge any prior lien on said property and/or advances made by the Mortgagee for the benefit or protection thereof or connected with this mortgage and retain or be awarded all sums then payable by or chargeable to the Mortgagor on every account, rendering to the Mortgagor the surplus, if any. If such proceeds shall be insufficient to discharge the same in full, the Mortgagee may have any other legal recourse against the Mortgagor for the deficiency. The Mortgagee may be the purchaser at any foreclosure sale.

The Mortgagee shall have the right to enforce one or more remedies hereunder or any other remedy it may have, successively or concurrently.

The Mortgagee shall have the right and is hereby expressly authorized to make application of any payments made to it and of any rents, income and profits collected by it upon the obligations and liabilities of the Mortgagor to the Mortgagee, other than the promissory note hereinabove referred to.

And the Mortgagor hereby covenants with the Mortgagee, as follows:

That the Mortgagor will pay and discharge the obligations secured hereby and all taxes, rates,

Plaintiff's Exhibit G—(Continued)

assessments, rents, impositions, duties and charges of every kind and nature, which are now or may hereafter be levied or assessed or become or threaten to become a charge upon or against or relate to said mortgaged property or the debt and interest, the payment of which is secured by these presents; and that in default of any such payment or upon failure to observe or perform any covenant or condition of this mortgage, the Mortgagee may make any advances and incur attorney's fees that to it may seem proper or necessary to protect said property and/or this mortgage and the rights of the Mortgagee hereunder and recover any such advances made and all expenses, including attorney's fees, paid or incurred by it, even though any such charge be invalid, upon demand, together with interest thereon to the date of payment at the rate of six per cent per annum, and the same shall be secured hereby;

That the Mortgagor will keep the mortgaged property in good condition and repair, and comply with all laws and governmental rules and regulations applicable thereto, and not commit or suffer any strip or waste, and that the Mortgagee may enter and inspect the premises and make any repairs which it deems proper and the cost thereof shall constitute an advance under the preceding paragraph hereof;

And will keep the improvements on said premises insured against fire in an amount equal to the full insurable value thereof and in such manner and

Plaintiff's Exhibit G—(Continued)

form and in such insurance companies as the Mortgagee shall designate, and deposit the policy or policies therefor with the Mortgagee, it being agreed that the proceeds of insurance shall be applied by the Mortgagee, at its option, either to rebuilding or repair of damage, or in reduction of any indebtedness hereunder, and any other insurance procured thereon shall be made payable as directed by and be claimable by the Mortgagee;

That in case the mortgaged property or any part thereof is condemned the Mortgagee may appear and defend any such suit and is hereby irrevocably authorized to collect all the proceeds, and apply the same upon any obligation secured hereby and all costs, expenses and attorneys' fees paid or incurred by it shall constitute an advance hereunder;

That the Mortgagor will keep the mortgaged property free of all liens that may be, or be threatened to be, made, prior to the lien of this mortgage;

That the Mortgagor is the owner in fee simple of the above described property; that said property is free from all encumbrances that the Mortgagor has good right to grant and convey the same unto the Mortgagee as aforesaid, and will Warrant and Defend the same unto the Mortgagee, forever, against the claims and demands of all persons;

And for the consideration aforesaid, Chiyono Fujino, wife of the Mortgagor, does hereby release and quitclaim unto the Mortgagee, its successors and assigns, forever, all her right, title and interest by

Plaintiff's Exhibit G—(Continued)

way of dower or otherwise in and to the said land and every part thereof.

That the term "Mortgagee" as and when used herein shall include the Mortgagee, its successors and assigns and that the term "Mortgagor" as and when used herein shall include the Mortgagor and the Mortgagor's heirs, executors, administrators, successors and assigns; that all covenants and agreements on the part of the Mortgagor to be observed and performed shall be joint and several if entered into by more than one; that the singular shall include the plural and vice versa; and the use of any gender shall include all genders;

That these presents are and shall be a continuing security mortgage for all present obligations of the Mortgagor to the Mortgagee and for all future advances which may be made from time to time by the Mortgagee to the Mortgagor and for all future obligations direct or indirect of the Mortgagor to the Mortgagee, and that payment of any present and/or future debt and/or obligation of the Mortgagor as aforesaid shall not release these presents, which shall continue as security as aforesaid until a release hereof is filed in the Office of said Assistant Registrar of the Land Court and recorded in the Bureau of Conveyances at Honolulu aforesaid.

Plaintiff's Exhibit G—(Continued)

In Witness Whereof, the Mortgagor and his said wife have hereunto set their hands and seals the day and year first above written.

YOTARO FUJINO,
CHIYONO FUJINO,

[Seal] By TOKUICHI TSUDA,
Their Attorney in Fact.

YOTARO FUJINO,
CHIYONO FUJINO,

[Seal] By YASUO TSUTSUMI,
Their Attorney in Fact.

I hereby certify that the month and year "December, 1940" appearing in the first line, page 1, of this instrument, were changed to read "March, 1941" prior to execution and acknowledgment hereof.

/s/ K. Y. CHING,
Notary Public.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 13th day of March, 1941, before me personally appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me known to be the persons who executed the foregoing instrument in behalf of Yootaro Fujino (also known as Yotaro Fujino) and Chiyono Fujino, husband and wife, and acknowledged that they executed the same as their free act and deed of Yootaro Fujino and Chiyono Fujino.

[Seal] /s/ K. Y. CHING,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT H

Office of the Assistant Registrar, Land Court,
Territory of Hawaii (Bureau of Conveyances)

Honolulu, Hawaii, May 19, 1941.

The attached instrument is a true copy of Document Number 58404, received for registration in this office, May 19, 1941, at 11:47 o'clock a.m., and noted on Certificate of Title Number 3, and from which Certificate of Title Number 24074 has been issued.

And also recorded in the Bureau of Conveyances in Liber 1638, Pages 423-427.

Attest:—

[Seal] /s/ OLIVER P. AIU,

Assistant Registrar, Land
Court, Territory of Hawaii.

Know All Men by These Presents:—

That Yotaro Fujino (also known as Yootaro Fujino), whose wife's name is Chiyono Fujino, of Honolulu, City and County of Honolulu, Territory of Hawaii, Grantor, for and in consideration of the sum of One Dollar (\$1.00) to him in hand paid by his son, Kaname Fujino, an unmarried man, whose residence and post office address is 1217 North King Street, Honolulu aforesaid, Grantee, the receipt whereof is hereby acknowledged, and in further consideration of the love and affection which the Grantor has for the Grantee, does hereby

Plaintiff's Exhibit H—(Continued)

given, grant, bargain, sell and convey unto said Grantee, his heirs and assigns:

First: All that certain parcel of land (portion of the land described in Royal Patent 688, Land Commission Award 1239, Apana 2, to Pine) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at the South corner of King Street and a lane leading to the Former Japanese Hospital, and running as follows:

1. S. $33^{\circ} 10'$ E. true 112 feet along King Street;
2. S. 63° W. true 150 feet along remaining portion of Apana 2, R. P. 688 to Pine;
3. N. $23^{\circ} 35'$ W. true 102 feet along Japanese Hospital;
4. Thence to the initial point, along lane 132.5 feet.

Containing an area of 15,000 square feet, or thereabouts, and being the land conveyed to the Grantor by Lam Shee, by deed dated August 3, 1926, and recorded in the Bureau of Conveyances at Honolulu in Book 842, Page 4.

Second: All that certain parcel of land (portion of the land described in Land Commission Award 2222, Apana 3, to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described;

Beginning at a 1" galvanized iron pipe, at the North corner of this lot and the west corner of Lot No. 3, the coordinates of said point of beginning referred to Government Survey Trig. Station "Punchbowl" being 5142.6 feet North and 7247.2

Plaintiff's Exhibit H—(Continued)

feet West, and running by true azimuths and distances:

1. 334° 10' 114.8 feet along Lot 3 to a 1" galvanized iron pipe;
2. 62° 19' 107.9 feet along Lot 1 to a 1" galvanized iron pipe;
3. 146° 45' 115.2 feet along fence, along B. P. Bishop Estate to a 1-in. galvanized iron pipe;
4. 242° 19' 122.8 feet along fence along L.C.A. 1917, Apana 1, to Hiki, to Nieper, to the point of beginning.

Containing an area of 13,234 square feet, or thereabouts, and being the land conveyed to the Grantor by Sano Danjo, by deed dated March 1, 1923, and recorded in said Bureau in Book 671, Page 319.

Third: All that certain parcel of land (portion of the land described in Royal Patent 2082, Land Commission Award 2222, Apana 3 to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a 1 in. galv. iron pipe, at the North corner of this lot and the East corner of Lot No. 3, the coordinates of said point of beginning referred to City and County Survey Trig. Station "Punch-bowl" being 5045.3' North and 7214.7' West and running by true azimuths and distances:

1. 334° 20' 115.4 feet along fence, along L.C.A. #1239 to Pine, to J. H. Schnack, to a post;
2. 61° 24' 102.4 feet along L.C.A. #4455 Ap. 1 to Kaaloa, to a 1¼ in. galvanized iron pipe in concrete;
3. 146° 45' 117.7 feet along fence, along B. P. Bishop Estate to a 1-in. galvanized iron pipe;
4. 242° 19' 117.9 feet along Lots #2 and #3 to the point of beginning.

Plaintiff's Exhibit H—(Continued)

Containing an area of 12,810 square feet, or thereabouts, and being the land conveyed to the Grantor by Jirokichi Fujiyoshi, by deed dated October 5, 1933, and recorded in said Bureau in Book 1219, Page 193.

Fourth: All that certain parcel of land (portion of the land described in Royal Patent 1506, Land Commission Award 2319, Apana 2 to Nawai) adjoining the Kalihi Branch of the Oahu Railway & Land Co.'s 40 foot Right of Way, Southeasterly from Waiakamilo Road at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a pipe at the South corner of this piece of land, on the Northeast side of the Oahu Railway and Land Company's 40 foot Right of Way (Kalihi Branch) the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokaueu" being 5541.20 feet South and 1710.02 feet West and running by true azimuths:

1. 146° 07' 60.22 feet along Oahu Railway and Land Company's 40-foot Right of Way (Kalihi Branch) to a pipe in concrete;
2. 155° 40' 63.85 feet along Section "Z" of Land Court Application 750 to a pipe in concrete;
3. 243° 02' 136.70 feet to a pipe in concrete;
4. 325° 00' 168.00 feet along Section "Y" of Land Court Application 750 to a pipe in concrete;
5. 78° 23' 161.62 feet to the point of beginning.

Plaintiff's Exhibit H—(Continued)

Containing an area of 21,224 square feet, or thereabouts, and being the land conveyed to the Grantor by Bishop Trust Company, Limited, Trustee, by deed dated January 28, 1933, and recorded in said Bureau in Book 1192, Page 464.

Fifth: All that certain parcel of land (portion of the land described in L. C. A. 7714-B, Apana 7 to Moses Kekuaiwa; R. P. 2145, L. C. A. 2319, Part 2, Apana 2 to Nawai) situate at Kapalama, Honolulu aforesaid, and bounded and more particularly described as follows:

Beginning at a point on the Easterly boundary of this piece of land and the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being 4,739.4 feet North, 7,605.9 feet West, and the true azimuth and distance to a 1 $\frac{1}{4}$ inch pipe set in concrete monument on the East line of L. C. A. 8515, Apana 1 to Keoni Ana, being 326° 07' 429.00 feet, and running by true azimuths:

1. 81° 25' 20.30 feet along portion of Kapalama owned by the Andrews Estate;
2. 357° 10' 72.00 feet along same;
3. 333° 10' 98.50 feet along same;
4. 69° 15' 69.50 feet along L.C.A. 8515, Apana 1 to Keoni Ana to a pipe in concrete;
5. 151° 00' 96.00 feet along Kapalama to a pipe in concrete;
6. 66° 15' 134.00 feet along same to a pipe in concrete;
7. 161° 10' 62.50 feet along L.C.A. 1730, Apana 2, Kilauea;
8. 228° 00' 50.00 feet along same;
9. 136° 05' 55.00 feet along same;
10. 79° 20' 36.00 feet along same;

Plaintiff's Exhibit H—(Continued)

11. 152° 30' 50.00 feet along L.C.A. 1731, Apana 1, to Kaaua;
12. 241° 30' 52.00 feet along same;
13. 166° 00' 147.00 feet along same;
14. 245° 00' 130.00 feet along L.C.A. 1730, Apana 1, to Kilauea;
15. 326° 07' 283.00 feet along the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way to the point of beginning and containing an area of 1.63 acres, or thereabouts.

Being the land conveyed to the Grantor by Watson Ballentyne, by deed dated October 28, 1936, and recorded in said Bureau in Book 1348, Page 261.

Sixth: All that certain parcel of land situate at Kapalama, City and County of Honolulu, said Territory, described as follows:

Lot Twenty-five-C (25-C), area 3,028.0 square feet, of Section C, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 750 of the Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, and being all of the land described in Transfer Certificate of Title No. 17,544 issued to said Grantor.

To Have and to Hold the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto said Grantee, his heirs and assigns, forever; Subject, However, to that certain Mortgage made by the Grantor to Bishop National Bank of Hawaii at Honolulu, dated March 13, 1941, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii as Document No. 57283

Plaintiff's Exhibit H—(Continued)

and noted on said Transfer Certificate of Title No. 17,544, and also recorded in the Bureau of Conveyances at Honolulu in Book 1626, Page 166.

And said Grantor does hereby covenant with said Grantee, that he is lawfully seised in fee simple of the granted property and has good right to grant and convey the same as aforesaid; that said property is free and clear of all encumbrances, except as aforesaid; and that he will and his heirs, executors and administrators shall warrant and defend the same unto said Grantee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid, Chiyono Fujino, wife of said Grantor, does hereby release, remise and quitclaim unto said Grantee, his heirs and assigns, forever, all of her right, title and interest, by way of dower or otherwise, in and to the said granted property.

In Witness Whereof, said Grantor and his wife have hereunto set their hands and seals this 21st day of March, A.D. 1941.

YOTARO FUJINO

(Also Known as Yootaro
Fujino).

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

His Attorneys-in-Fact.

CHIYONO FUJINO,

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

Her Attorneys-in-Fact.

Plaintiff's Exhibit H—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss.

On the 21st day of March, 1941, before me personally appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the attorneys-in-fact of Yotaro Fujino (also known as Yootaro Fujino), duly appointed under Power of Attorney dated February 20, 1941, recorded in Book 1633, Page 56, in the Bureau of Conveyances at Honolulu, T. H.; and that the foregoing instrument was executed in the name and behalf of said Yotaro Fujino (also known as Yootaro Fujino) by said Tokuichi Tsuda and Yasuo Tsutsumi as his attorneys-in-fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Yotaro Fujino (also known as Yootaro Fujino);

And on this 21st day of March, 1941, before me personally appeared Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the attorneys-in-fact of Chiyono Fujino duly appointed under Power of Attorney dated December 23, 1940, recorded in Book 1633, Page 49, in the Bureau of Conveyances at Honolulu, T. H.; and that the foregoing instrument was executed in the name and behalf of said Chiyono Fujino by said Tokuichi Tsuda and Yasuo Tsutsumi as her attorneys-in-

Plaintiff's Exhibit H—(Continued)

fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Chiyono Fujino.

[Seal] /s/ ERNEST N. MURAKAMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "I"

Know All Men by These Presents:—

That I, Kaname Fujino, of Honolulu, City and County of Honolulu, Territory of Hawaii (temporarily residing at Tokyo, Japan), have made, constituted and appointed and by these presents do hereby make, constitute and appoint Tokuichi Tsuda and Yasuo Tsutsumi, both of Honolulu aforesaid, my true and lawful attorneys-in-fact, jointly, for me and in my name, place and stead and for my use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by actions at law or in equity, attachments, or otherwise, and to compromise and agree for the same, and grant acquittances or other

sufficient discharges for the same, for me, and in my name to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements and hereditaments and accept the seisin and possession of all lands and all deeds and other assurances in the law therefor; to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate my lands or interests in land, tenements and hereditaments, upon such terms and conditions, and under such covenants, as they shall think fit; to vote at all meetings of any company or companies and otherwise to act as my representatives in respect of any shares now held or which may hereafter be acquired by me therein and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf; to represent me in any and all matters coming before the Bureau of Internal Revenue, Washington, D. C., or any representative thereof, regarding the filing of annual income tax returns or delinquent or amended income tax returns or other returns or reports of [Liber 1633, Page 53] whatever nature, including claims for refund or credit, the payment of any and all taxes which may be due and payable and the receiving, indorsing and cashing of all checks received from the Treasury Department, Washington, D. C., or elsewhere, which may apply to the refunding of taxes or otherwise; to make and file such returns or reports as may be required by the Social Security Board and the Bureau of Internal Revenue, Washington, D. C., or which may be required by the Tax Commissioner of the Territory

of Hawaii, or any other governmental authority; also to bargain and agree for, buy, sell, mortgage and hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property, in possession or in action, and to make, do and transact all and every kind of business of what nature and kind soever; and also for me and in my name and as my act and deed to sign, seal, execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, checks, notes, receipts, evidences of debt, releases and satisfaction of mortgages, judgments and other debts and such other instruments in writing of whatever kind or nature as may be necessary or proper in the premises.

Giving and Granting unto my said attorneys, jointly, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present with full power of substitution and revocation; and hereby ratifying and confirming all that my said attorneys, jointly, shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal this 12th day of December, 1940.

[Seal] /s/ KANAME FUJINO.

[Liber 1633, Page 54.]

Certificate of Acknowledgment of Execution
of Document

Empire of Japan, Prefecture of Tokyo,
City of Tokyo, Consulate General of the
United States of America—ss.

I, David Thomasson, Vice Consul of the United States of America at Tokyo, Japan, duly commissioned and qualified, do hereby certify that on this 12th day of December, 1940, before me personally appeared Kaname Fujino, to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and official seal the day and year last above written.

[Seal] /s/ DAVID THOMASSON,
Vice Consul of the United
States of America.

Service No. 5025.

Fee \$2.00 U. S. currency equal to Yen 8.76.

(American Consulate General, American Foreign Service. \$2.00 Dec. 12, 1940. Fee Stamp, Tokyo, Japan.)

Entered of Record this 3rd day of March, A.D. 1941, at 9:19 o'clock a.m. and compared. Mark N. Huckestein, Registrar of Conveyances. By, Clerk.

[Liber 1633, Page 55.]

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "J"

Imperial Japanese Consulate General
Honolulu, T. H.

No. 528

December 2, 1941

To Whom It May Concern:

This is to certify that Kaname Fujino, according to the records of this office, was expatriated from the Japanese Nationality on January 19, 1939, by Notification No. 15 of the Ministry of Home Affairs.

[Seal] CONSUL-GENERAL OF JAJAN

Per /s/ K. YUGE,

Secretary.

[Endorsed]: Filed C.C.A. Jan. 31, 1947.

The undersigned endorser, for value received, hereby jointly and severally waive presentment, demand of payment and notice of non-payment, protest and notice of protest, and consent to substitution, change or withdrawal of payment, without notice, and to extensions of time of payment, without notice.

Maker.....
Fujino, Kaname Mr.
Address.....
1221 F. Niepers Lane

Payments \$.....
Acct. Int. & Prin. MONTHLY
R.E. No. 9783B QUARTERLY
Date March 13th., 1941
Maturity March 13th., 1942

Handwritten:
"K" *Admitted*

\$ 15,000.00 Honolulu, T. H. March 13th 1941
- - - On or before One Year - - - after date, for value received,
- - - We jointly and severally - - -
promise to pay to the order of BISHOP NATIONAL BANK OF HAWAII at its office in
Honolulu, - - FIFTEEN THOUSAND & NO/100 - - DOLLARS,
with interest thereon from date hereof until fully paid, at six % per annum net over and
above taxes, interest and principal payable in lawful money of the United States of America,
interest payable monthly - - -

If default shall be made in any payment of interest or principal, then at the option of the
holder hereof without notice the entire debt shall immediately become due and payable together
with a reasonable attorney's fee and costs of collection.

Secured by Mortgage PAID YOTARO FUJINO, CHIYONO FUJINO
dated March 13 1941 Oct 6 1943 By Tokuichi Tsuda
Yotaro Fujino
YOTARO FUJINO, CHIYONO FUJIN
By Yasuo Tsutsumi
ChiYono Fujino

REAL ESTATE
FORM NO. 1 APR 20 1937

RECORD OF PAYMENTS MADE

DATE	INTEREST	TO	PAYMENTS	PRINCIPAL	BALANCE
JUN 20 1941		5th		15000 00	15000 00*
JUN 20 1941	35 33	7/5/41	1750 00		13250 00*
JUL 7 - 1941	48	8/5/41	164 67		13085 33*
AUG 1 - 1941	65 48	9/5/41	134 52		12950 81*
SEP 2 - 1941	75	10/5/41	135 25		12815 56*
OCT 2 - 1941	64 08	11/5/41	135 92		12679 64*
NOV 3 - 1941	63 40	12/5/41	136 60		12543 04*
DEC 2 - 1941	62 71	1/5/42	137 29		12405 75*
JAN 8 - 1942	62 03	2/5/42	137 97		12267 78*
FEB 9 - 1942	61 43		138 57		12129 21*
			8000 00		4129 21*
FEB 11 1942	28 64	3/5/42	171 36		3957 85*
MAR 4 - 1942	28 64	4/5/42	180 21		3777 64*
APR 7 - 1942	18 05	5/5/42	181 05		3596 59*
MAY 4 - 1942	17 98	6/5/42	182 02		3414 57*
JUN 6 - 1942	17 10	7/5/42	182 90		3231 67*
JUL 1 - 1942	16 16	8/5/42	183 84		3047 83*
AUG 4 - 1942	1524	9/5/42	184 76		2863 07*
SEP 2 - 1942	14 32	10/5/42	185 68		2677 39*
OCT 3 - 1942	13 39	11/5/42	186 61		2490 78*
NOV 4 - 1942	12 45	12/5/42	187 55		2303 23*
DEC 2 - 1942					

(PAYMENTS MADE ON WITHIN NOTE:

DATE	INTEREST	TO	PAYMENTS	PRINCIPAL	BALANCE
JAN 2 - 1943	11 52	1/5/43	188 48		2114 75*
FEB 2 - 1943	8 81	2/5/43	191 19		1923 56*
MAR 1 - 1943	8 01	3/5/43	191 99		1731 57*
APR 2 - 1943	7 21	4/5/43	192 79		1538 78*
MAY 1 - 1943	6 41	5/5/43	193 59		1345 19*
JUN 3 - 1943	5 60	6/5/43	194 40		1150 79*
JUL 1 - 1943	4 79	7/5/43	195 21		955 58*
AUG 1 8 1943	3 98	8/5/43	196 02		759 56*
SEP 3 - 1943	3 52	9/5/43	196 48		563 08*
OCT 4 - 1943	2 34	10/5/43	197 66		365.42*
OCT 6 - 1943			365.42		NIL

UNITED STATES DEPARTMENT OF AGRICULTURE
FOR THE NATIONAL FOREST SERVICE
PAUL P. O'BRIEN

PLAINTIFF'S EXHIBIT L-1

Yotaro Fujino
No. 19, 3-Chome
Denenchofu
Omori-ku, Tokyo
Telephone—Denenchofu 2474

January 16, 1941.

Messrs. Oahu Junk Company

Gentlemen:

I wish to congratulate the good health of you all. Now, as for us, fortunately we are all well; so please do not worry about us.

I thank you for your cablegram which reached me on the 12th of this month, reading: "Son born to Mrs. Fujiaki and both doing well. Please do no worry." We are grateful to you for everything you have done for us. Our whole family was relieved of anxiety when we received your message that both of them are well. When you are so busy with work at the store I hesitate to ask you, but please continue to look after them, now that there are two children and will be depending upon you more and more.

You have repeatedly called my attention relative to scrap shipment to Nippon Kokan. However, I don't believe there is any other transaction as was heretofore carried on between Nippon Kokan and the Kyoyei Shokwai because the Scrap Iron Importation Control Company (Board) is concluding sales contracts following the customary practice of other scrap iron importers. I was told once or twice by the Mitsui Head Office that the Control

Company has been treating scrap iron from Hawaii as peculiar grade commodity and that the Control Company has been scheming to force the price (of Hawaii scrap) down to 100 yen per kilogram. I went to the Control Company, and, in the presence of its staff member, a man from Nippon Kokan, and Mr. Izawa of Mitsui at Yokohama, I explained that, during the last European War, the practice was to ship the scrap iron of Oahu Junk and Honolulu Junk to the continental United States and then to have it re-shipped to Japan by Americans. And I made a protest to the Control Company, which is under the supervision of the Japanese government, against its policy of doing things which bring hardship upon the Japanese doing business in foreign countries. Thereafter, by a virtual order of the Control Company, the Mitsui Head Office ceased handling Oahu Junk Company's scrap iron and Nippon Kokan commenced handling it.

As I reported to you previously, the Control Company told me that the two firms should get together, form a partnership and buy (scrap); that you should cooperate with the national policy by buying cheaply; that although it could hardly ask you to do this at a loss to yourselves, it wanted you to co-operate by shipping scrap iron to Japan as cheaply as possible. Indeed I was told by the Control Company that the government, at present, is supplying the factories at a loss of 60 yen per kilogram.

If one party should campaign for its own profit, I believe that both will suffer losses. Up to the

present time, Oahu Junk has been selling to Mitsui Bussan and others, and Kyoyei has been selling to Nippon Kokan. Consequently, Oahu Junk got after Mitsui by saying that Kyoyei got the better deal because it sold at the face amount of the Bill of Lading, without charges against it for cutting and with no deduction for shrinkage (loss of weight in transit); and, on the other hand, Kyoyei has been telling the Kokan that the prices received by Oahu Junk are higher than its prices. Thus each company was reaping its own share of profit. However, in order to ship cargo as the two companies have been doing in the past, I believe that you should hereafter go about it with a great deal of tact.

Please forgive me for my hasty writing. I pray for your good luck and health.

Yours respectfully,

P.S. As I have already received my power of attorney, I will immediately go to the American Consul, have it certified and will mail it to you.

The documents sent by you are as follows:

1 Trial balance for November last year

1 Copy of Articles of Incorporation

Memorandum of stockholders' names, number of shares and certified numbers

Four certificates of stock

Copy of cable

I acknowledge receipt of the above mentioned documents.

[Endorsed]: Filed Nov. 13, 1947.

PLAINTIFF'S EXHIBIT M-1

Yotaro Fujino
No. 19, 3-Chome
Denenchofu
Omori-ku, Tokyo
Telephone—Denenchofu 2474

February 20, 1941.

Messrs. Oahu Junk Company

Gentlemen:

Thank you very much for your wire dated February eighteenth: "Loaded 12 American tons of Peeling, 11½ American tons of Red Tube on Kamakura. Please insure. Let us know the price of 15 American tons of Peeling, 1 American ton of Red Tube and 11½ tons of Black (Tube) for March shipment. Have you sent your power of attorney? Unless you send (it), it is not possible to change (the ownership or title of) land to Master Kaname."

With reference to scrap rubber the situation is as already stated; however, I shall present the cablegram and shall negotiate once again for March shipment and you will be advised of the result later.

I hope that you will all take good care of yourselves.

With this, a hasty reply, I remain,

Yours very truly,

Written by: Takeo Fujino

Please accept power of attorney which I have enclosed herewith.

[Endorsed]: Filed Nov. 13, 1947.

UNITED STATES
GIFT TAX RETURN
CALENDAR YEAR 1941

(Space for use of Bureau)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
MAR 15 1947
PAUL P. O'BRIEN
CLERK

(To be filed in duplicate with the Collector of Internal Revenue for the donor's district not later than the 15th day of March following the close of the calendar year)

DONOR Yotaro Fujino
(Given name) (Middle name or initial) (Surname)
ADDRESS 1217 No. King Street
CITIZENSHIP National of Japan
RESIDENCE Tokyo, Japan

Have you (the donor), during the calendar year indicated above, without adequate and full consideration in money or other property, made any transfer exceeding \$2,000 in value (or regardless of value if a future interest) as follows? (Answer "Yes" or "No")

1. By the creation of a trust (.....) or the making of additions to a trust previously created (.....). In either case for the benefit of a person or persons other than yourself, and with respect to which you retain no power to revest the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously created trust (.....) no.
2. By permitting a beneficiary, other than yourself, to receive the income from a trust created by you and with respect to which you retained the power to revest the beneficial title to the property in yourself or to change the beneficiaries or their proportionate benefits (.....) no.
3. By the purchase of a life insurance policy (.....) or the payment of a premium on a previously issued policy (.....), the proceeds of which are in either case payable to a beneficiary other than your estate, and with respect to which you retained no power to revest the economic benefits in yourself or your estate or to change the beneficiaries or their proportionate benefits; or by relinquishing every such power that was retained in a previously issued policy (.....) no.
4. By permitting another to withdraw funds from a joint bank account which were deposited by you (.....) no.
5. By conveying title to another and yourself as tenants or to your wife or husband and yourself as tenants by the entirety (.....) no.
6. By the exercise or release of a power of appointment, except as provided in subparagraphs (1) through (4) of the instructions (.....) no.
7. By conveying community property to another person, except as provided in subparagraphs (1) through (4) of the instructions (.....) no.
8. By any other method, direct or indirect (.....) no.

If the answer is "Yes" to any of the foregoing, such a transfer should be fully disclosed under schedule A.

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Total included amount of gifts for year (item c, schedule A)	\$ 25,750.00
2. Total deductions for charitable, public, and similar gifts for year (item c, schedule B)	\$ -
3. Specific exemption claimed (see section 11 of instructions)	\$ -
4. Total deductions (item 2 plus item 3)	\$ -
5. Amount of net gifts for year (item 1 minus item 4)	\$ 25,750.00

COMPUTATION OF TAX (see section 15 of instructions)

1. Amount of net gifts for year (item 5, above)	\$ 25,750.00
2. Total amount of net gifts for preceding years (item c, schedule C)	\$ -
3. Total net gifts (item 1 plus item 2)	\$ 25,750.00
4. Tax computed on item 3	708.75
5. Tax computed on item 2	-
6. Tax on net gifts for year without addition of defense tax	708.75
7. Defense tax (see section 11 of instructions)	70.88
8. Total tax payable for year (item 6 plus item 7)	779.63

I swear (or affirm) that this return, including the accompanying schedules and statements, if any, has been examined by me, and the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Federal gift tax law and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfers or transfers disclosed herein under schedule A was made by me (the donor) during said calendar year.

NOTARIAL
SEAL

Sworn to and subscribed before me this _____ day of March, 19 42

(Signature of donor/executor/other person)

(Signature and title of officer administering oath)

(Address of person filing return)

AFFIDAVIT OF PERSON PREPARING RETURN

I swear (or affirm) that I prepared this return for the person named herein and that this return, including the accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability which I have any knowledge.

NOTARIAL
SEAL

Sworn to and subscribed before me this _____ day of March, 19 42

(Signature of person preparing return)

(Signature and title of officer administering oath)

(Address of person preparing return)

- N

11 15
14-2, and 16

SCHEDULE A—Total Gifts During Year (see sections 5, 6, 7, 8, 9, 11, 12, and 15 of instructions)

ITEM No.	DESCRIPTION OF GIFT, AND DONEE'S NAME AND ADDRESS	DATE OF GIFT	VALUE AT DATE OF GIFT
	Date of Deed - March 21, 1941		\$
	KEY ADDRESS		
1	1-5-03-23 1217 No. King St.--Land & Building	3/31/41	12,600.
2	1-5-03-35 rear of 1217 No. King St.--Land & Building	3/21/41	7,450.
3	1-5-03-32 " " " " " " " "	3/21/41	3,550.
4	1-5-03-2 " " " " " " " "	3/21/41	1,250.
5	1-5-23-17 " " " " " " " "	3/21/41	3,000.
6	1-5-02-13 904 Waiakamilo Road " " "	3/21/41	1,900.
	Motive: Love and affection		
	Donee: Kaname Fujino		
	1217 No. King St.		
	Honolulu, Oahu		

(a) Total	\$4,000 in trust or	\$ 29,750
(b) Less total exclusions not exceeding \$4,000 for each donee (except gifts of future interests)		4,000
(c) Total included amount of gifts for year		\$ 25,750

SCHEDULE B—Deductions for Charitable, Public, and Similar Gifts During Year (see sections 10 and 13 of instructions)

ITEM No.	NAME AND ADDRESS OF DONEE, AND CHARACTER OF INSTITUTION	VALUE AT DATE OF GIFT
		\$

(a) Total	\$
(b) Less total exclusions not exceeding \$3,000 for each donee (except gifts of future interests)	
(c) Total deductions for charitable, public, and similar gifts for year	\$

SCHEDULE C—Returns, Amounts of Specific Exemption, and Net Gifts for Preceding Years (subsequent to June 6, 1932)

CALENDAR YEAR	COLLECTION DISTRICT IN WHICH PRIOR RETURN WAS FILED	AMOUNT OF SPECIFIC EXEMPTION	AMOUNT OF NET GIFTS
		\$	\$

(a) Totals for preceding years (without adjustment for reduced specific exemption)	\$	\$
(b) Amount, if any, by which total specific exemption, line a, exceeds \$30,000 (see section 14 of instructions)		
(c) Total amount of net gifts for preceding years (total, last column, line a, plus amount, if any, line b)	\$	\$

(If more space is needed, attach additional sheets of same size)

GIFT TAX

DONEE'S OR TRUSTEE'S INFORMATION RETURN OF GIFTS

Calendar Year 19____

(TO BE FILED IN DUPLICATE)

(Space for use of Collector
or Bureau)

RECEIVED

Donor's name Yotaro Fujino

Donor's address Tokyo, Japan

Donee's name Kaname Fujino

Donee's address 1217 No. King St., Honolulu

Trustee's name _____

Trustee's address _____

Item No.	Description of property received	Date of gift	Approximate value at date of gift
	Date of Deed - March 21, 1941		\$
	KEY ADDRESS		
1	1-5-03-23 1217 No. King St. Land & Bldg.	3/21/41	12,600.00
2	1-5-03-35 rear of 1217 No. King " " "	3/21/41	7,450.00
3	1-5-03-32 " " " " " " " "	3/21/41	3,550.00
4	1-5-03-2 " " " " " " " "	3/21/41	1,250.00
5	1-5-23-17 " " " " " " " "	3/21/41	3,000.00
6	1-5-02-13 904 Waiakamilo Road " " "	3/21/41	1,900.00

Pursuant to the Gift Tax Regulations of the Treasury Department, I hereby give notice of the herein-described property received from the above-named donor, and certify that I have carefully read the instructions on the reverse side of this form and that all the information given herein is correct, to the best of my knowledge and belief.

(Signature) _____

(Designation) _____

(Address of donee's executor or administrator)

16-11768-7

Date March, 1942

T.H.
HONOLULU, ~~XXXXX~~

Mar 16 1942

~~XXXX~~ No. 1

~~XXXXXX~~
BISHOP NATIONAL BANK
~~XXXXXX~~

OF HAWAII AT HONOLULU

PAY TO THE
ORDER OF COLLECTOR OF INTERNAL REVENUE

\$ 779.63

SEVEN HUNDRED SEVENTY NINE and 63/100

DOLLARS

Yotaro Fujino

By (s) T. Tsuda

By (s) Y. TSUTSUMI

For Deposit with the
BISHOP NATIONAL BANK OF H
at Honolulu
FOR CREDIT OF
THE TREASURER OF THE U.
F.H.KANNE
Collector of Internal R

PLAINTIFF'S EXHIBIT "O"

Mackay Radio
Radiogram
The International System

Received at 713 Bishop Street, Honolulu, T. H.,

1941 Sept 22 AM 6 45

Hu7sn Tokyo 12 22 213 PM

LC Oahujunk

Honolulu

BUJIKIKOKU KANAMEE SIRASE TUNE-
TOKUNNI KEKKONNO OIWAITOSITE GOH-
YAKUDORU OWATASIKOU

FUJINO

1941 SEP 22 AM 730

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "P"

Minutes of Meeting of the Board of Directors of Oahu Junk Company, Ltd., Held at the Office of the Company at 1217 N. King St., Honolulu, T. H., on June 8, 1942, at 2:30 p.m.

Upon notice duly given, a meeting of the Board of Directors of Oahu Junk Company, Ltd., was held at the time and place above mentioned.

Present: Kaname Fujino, Tokuichi Tsuda, Yasuo Tsutsumi, Mitsugi Maneki, Shizue Maneki, by proxy;

Absent: Tadashi Fujieki, Katsue Fujieki.

The meeting was called to order by Kaname Fujino, President. He explained the purpose of the meeting and then the matter was referred over to T. Tsuda, Vice-President. T. Tsuda then further explained that the license to transfer 110 shares of Y. Fujino's stock to the Company as recorded in the minutes of May 15, 1942, has been denied by the Foreign Funds Control. T. Tsuda stated that since the license has been denied and that the money had to be raised for Y. Fujino in order to make his 1940 additional tax payment due to the United States Government, he suggested that the Company make an advance of \$3,541.53 to Y. Fujino upon the security of savings account balance with the Yokohama Special Bank at Honolulu, and also to make an advance to Kaname Fujino of \$8,000 upon his written agreement to apply the monthly rental of \$300 due him from the Company together

with the security of savings account with the Pacific Bank in the sum of \$1,515.38 in the name of Kaname Fujino; then to have Kaname Fujino pay the \$8,000 advanced to him by the Company to his father, Y. Fujino in part payment of his indebtedness so as to enable his father to pay said taxes.

After some discussion, Y. Tsutsumi moved that the above mentioned advances be made by the Company. The motion was seconded by M. Maneki and was unanimously carried.

There being no further business, the meeting was duly adjourned at 3:30 p.m.

Dated: Honolulu, T. H., June 8, 1942.

[Seal] /s/ SHIZUE MANEKI,
Secretary.

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "Q"

Mackay Radio
Radiogram
The International System

Received at 713 Bishop Street, Honolulu, T. H.
1941 Mar 21 AM 7:04

HU333SN WASHINGTON DC 19 21 1201 PM
LC BEMKUMI

HONOLULU

MUST KNOW ULTIMATE CONSUMER AND
PURPOSE FOR WHICH OAHUS SHIPMENT
REQUIRED BEFORE MAKING LICENSE AP-
PLICATIONS BUTLER

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "R"

Mackay Radio
Radiogram
The International System

Send the following Message, subject to the terms
on back hereof, which are hereby agreed to

3/24/41

LC
RELTUB
WASHINGTONDC

ULTIMATE CONSUMER OF BARS AND
FLAT IRON SHINKO AIRCRAFT KOOGYO-
SHO NUMBER 291 SHIMURA AZUKIZAWA
ITABASHIKU TOKYO FOR REPAIRING
SHOP WAREHOUSE

MURAKAMI

[Endorsed]: Filed C.C.A. Nov. 13, 1947.

PLAINTIFF'S EXHIBIT "S"

Know All Men by These Presents:

That I, Chiyono Fijuno, wife of Yootaro Fujino,
of Honolulu, Hawaii, in consideration of the sum of
One Dollar (\$1.00) to me paid by my son, Kaname
Fujino, of the same place, receipt whereof is hereby
acknowledged, and of the love and affection which
I have for him, do hereby grant, bargain, sell and
convey unto the said Kaname Fujino, and his heirs
and assigns, all of the following described real
property:

All of that certain piece or parcel of land (comprising portion of the lands described in Royal Patent 2082, Land Commission Award 2222, Apana 2, to Kapalu, and Royal Patent 2081, Land Commission Award 1979, Apana 1 to Hiku), situate, lying and being at Waipilopilo and Kalanakila, Kapalama, Honolulu, City and County of Honolulu, Territory of Hawaii, and thus bounded and described:

Beginning at a pipe at end of fence, at the East corner of this piece, the coordinates of said point referred to Government Survey Triangulation Station "Punchbowl" being 4368.8 feet South and 6211.7 feet East, and running by true azimuths:

1. 52° 14' 14.00 feet to a pipe at fence corner;
2. 62° 36' 132.90 feet along fence, along L.C.A. 2222:3 to Kapalu to a pipe;
3. 146° 45' 80.60 feet along fence to a pipe in concrete;
4. 146° 15' 119.60 feet along Kuauna, along the Northeast side of Auwai to a stake;
5. 232° 28' 70.45 feet along old fence line to a stake;
6. 326° 57' 112.50 feet along remainders of L.C.A. 2222:2 to Kapalu, and 1979:1 to Hiku to a stake at fence corner;
7. 242° 46' 98.90 feet along fence;
8. 339° 14' 97.40 feet along fence to the point of beginning, containing an area of 23,018 square feet, and being the same premises conveyed to me by the following deeds:
(a) Deed from Yim Shee to Chiyono Fujino and Tome Chiogioji dated Oct. 7, 1927, recorded in the Office of the Registrar of Conveyances in Book 903, at Page 325, and
(b) Deed from Tome Chiogioji to Chiyono Fujino dated May 1, 1930, recorded in said Office in Book 1065, at Page 104.

Saving and Reserving from the operation of this deed the right on my part to receive and collect and appropriate to my own use all of the rents, issues and profits of the land hereby conveyed for and during the term of my natural life.

To Have and to Hold the same, together with all the rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the said Kaname Fujino, and his heirs and assigns, to his and their own use and behoof forever, except as aforesaid.

And Yootaro Fujino, husband of Chiyono Fujino, in consideration of the premises and of the sum of One Dollar (\$1.00) to him paid does hereby release and [Liber 1259, Page 472] quitclaim unto said Kaname Fujino, and his heirs and assigns, all of his right, present or prospective, in and to the above described property.

In Witness Whereof, the Grantor and her husband have hereunto set their hands this 12th day of December, 1934.

/s/ CHIYONO FUJINO

(Japanese characters)

/s/ YOOTARO FUJINO

Witness:

/s/ F. KONDO

Territory of Hawaii,
City and County of Honolulu—ss.

On this 12th day of December, 1934, before me personally appeared Chiyono Fujino and Yootaro Fujino, her husband, to me satisfactorily proved to be the persons described in and who executed the foregoing instrument, by the oath of F. Kondo, a credible witness for that purpose, to me known and by me duly sworn; and the said Chiyono Fujino and Yootaro Fujino severally acknowledged to me that they executed said instrument as their free act and deed.

[Seal] /s/ ABEL M. YAMASHITA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Entered of Record this 13th day of December,
A. D. 1934, at 3:34 o'clock p.m. and compared.
Carl F. Wikander, Registrar of Conveyances. By
....., Clerk.

[Liber 1259, Page 473]

[Endorsed]: No. 11786. United States Circuit
Court of Appeals for the Ninth Circuit. Kaname
Fujino, Appellant, vs. Tom C. Clark, Attorney Gen-
eral of the United States, Appellee. Transcript of
Record Upon Appeal from the District Court of
the United States for the Territory of Hawaii.

Filed November 13, 1947.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11786

KANAME FUJINO,

Appellant,

vs.

TOM C. CLARK, Attorney General of the United
States as Successor to the Alien Property
Custodian,

Appellee.

STATEMENT OF POINTS

Appellant intends to rely on the following points
on appeal:

- (1) The Court erred in holding that appellant was a national of a foreign country within the meaning of Section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. Section 5(b) and Executive Orders Nos. 8389 and 9095;
- (2) The Court erred in holding that the real property involved was held for an enemy within the meaning of Section 7(c) of the Trading With the Enemy Act;
- (3) The Court erred in holding that the real property involved was held on behalf of an enemy country or a national thereof within the meaning of Section 5(b) of the Trading With the Enemy Act, and Executive Orders Nos. 8389 and 9095;

- (4) The Court erred in holding that the deed of gift dated March 21, 1941, from Yotaro Fujino to appellant was a nullity as against the United States;
- (5) The Court erred in holding that appellant has no interest, right or title in the real property involved within the meaning of Section 9(a) of the Trading With the Enemy Act;
- (6) The Court erred in placing such a burden of proof upon appellant seeking to recover real property of which he is the record owner as to amount to a deprivation of his property without due process of law, contrary to the Constitution of the United States, Amendment V.

Dated: Honolulu, Hawaii, January 22, 1948.

/s/ GARNER ANTHONY,
Attorney for Appellant.

Of Counsel:

ROBERTSON, CASTLE & ANTHONY,
312 Castle & Cooke Building,
Honolulu 1, Hawaii.

[Endorsed]: Filed Jan. 26, 1948.

